

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND *
DEANIA JACKSON *
* NO. 96-8461
VERSUS * DIVISION "I"
* SECTION 14
THE AMERICAN TOBACCO *
COMPANY, INC., ET AL. *
*
* * * * *

Transcript of proceedings before The
Honorable Richard J. Ganucheau, Judge Pro Tempore,
Civil District Court, Parish of Orleans, State of
Louisiana, 421 Loyola Avenue, New Orleans, Louisiana
70112, commencing on June 18, 2001.

* * * * *
Tuesday
April 29, 2003
1:14 p.m.
* * * * *

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19174

APPEARANCES:

GAUTHIER, DOWNING, LaBARRE, BEISER
AND DEAN
Attorneys at Law
(By: Deborah M. Sulzer, Esquire)
3500 North Hullen Street
Metairie, Louisiana 70002
- AND -
HERMAN, HERMAN, KATZ AND COTLAR, L.L.P.
Attorneys at Law
(By: Russ M. Herman, Esquire)
820 O'Keefe Avenue
New Orleans, Louisiana 70113
- AND -
BRUNO AND BRUNO
Attorneys at Law
(By: Joseph M. Bruno, Esquire)
825 Baronne Street
New Orleans, Louisiana 70113
- AND -
CARTER & CATES
(By: Kenneth M. Carter, Esquire)
Attorneys at Law
Suite 1230, Energy Centre
1100 Poydras Street
New Orleans, Louisiana 70163-1230

18

- AND -

19

GERTLER, GERTLER, VINCENT AND PLOTKIN, L.L.P.
Attorneys at Law
(By: Michael H. Gertler, Esquire)
127-129 Carondelet Street
New Orleans, Louisiana 70130

22

- AND -

23

MURRAY LAW FIRM, APLC
Attorneys at Law
(By: Stephen B. Murray, Esquire)
Suite 2550
909 Poydras Street
New Orleans, Louisiana 70112

26

27

- AND -

28

BENCOMO AND ASSOCIATES
Attorneys at Law
(By: Raul R. Bencomo, Esquire)
Suite 2110, One Poydras Plaza
639 Loyola Avenue
New Orleans, Louisiana 70113

29

30

31

- AND -

32

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19175

1

W. JAMES SINGLETON, ESQUIRE
4050 Linwood Avenue
Shreveport, Louisiana 71108-2432
(Attorneys for the Plaintiffs)

2

3

4

JONES DAY
Attorneys at Law
(By: Mark A. Belasic, Esquire)
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

5

6

7

- AND -

8

STONE PIGMAN WALTHER WITTMANN, L.L.C.
Attorneys at Law
(By: Phillip A. Wittmann, Esquire)
546 Carondelet Street
New Orleans, Louisiana 70130
(Attorneys for the Defendant,
R. J. Reynolds Tobacco Company)

10

11

12

13

KING AND SPALDING
Attorneys at Law
(By: Richard A. Schneider, Esquire
Jack Williams, Esquire)
191 Peachtree Street
Atlanta, Georgia 30303-1763
(Attorneys for the Defendant,
Brown and Williamson Tobacco
Corporation, individually and
as successor by merger to
The American Tobacco Company)

14

15

16

17

18

19

ADAMS AND REESE, L.L.P.
Attorneys at Law
(By: Charles F. Gay, Jr., Esquire
Ronald J. Sholes, Esquire)
Suite 4500, One Shell Square
701 Poydras Street
New Orleans, Louisiana 70139
(Attorneys for the Defendant,
Philip Morris, Incorporated)

24

25

SHOOK, HARDY AND BACON, L.L.P.
Attorneys at Law
(By: Gary R. Long, Esquire
Tammy B. Coker, Esquire)

26

27

One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105-2118
- AND -

28

29

30

31

32

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1

GORDON, ARATA, McCOLLAM, DUPLANTIS
AND EGAN, L.L.P.

2

Attorneys at Law
(By: Steven W. Copley, Esquire)

3

Suite 4000
201 St. Charles Avenue
New Orleans, Louisiana 70170-4000
(Attorneys for the Defendant,
Lorillard Tobacco Company)

5

6

7

SPECIAL MASTER:

8

Dominic J. Gianna, Esquire
Middleberg, Riddle and Gianna
Suite 3100
201 St. Charles Avenue
New Orleans, Louisiana 70170-3100

9

10

11

12

13

14

REPORTED BY:

15

Carol Vallette Slater
Certified Court Reporter
Register Professional Reporter
(No. 78020)
Huffman & Robinson, Inc.
Suite 250 Annex
701 Poydras Street
New Orleans, Louisiana 70139
(504) 525-1753 (800) 749-1753

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1 P R O C E E D I N G S
2 THE COURT:
3 Recess is over.
4 When the luncheon recess started, I
5 indicated that we would resume a little early in
6 order for me to hear some arguments on the
7 objections to some demonstrative aids that the
8 defendants are planning to use in connection with
9 the redirect of Dr. Norrell. Mr. Sholes attempted
10 to talk, I asked him to --
11 MR. SHOLES:
12 May I interrupt, for a moment, Your
13 Honor. I noticed Mr. Belasic wanted to weigh
14 in on this issue, also. They have not been
15 brought back yet. He is on his way. If the
16 Court will indulge us for a couple minutes

17 just for him to get here.
18 THE COURT:
19 We will wait a couple minutes.
20 MR. SHOLES:
21 Thank you, Your Honor.
22 MR. RUSS HERMAN:
23 Have you given the Judge a copy of this
24 transcript?
25 MR. SHOLES:
26 Of course.
27 (Whereupon, a discussion was held
28 off the record.)
29 THE COURT:
30 Mr. Sholes?
31 MR. SHOLES:
32 Yes, Your Honor. I understand.
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1 THE COURT:
2 I said 1:15, and it's now nearly 1:25.
3 MR. SHOLES:
4 I understand, Your Honor.
5 THE COURT:
6 We're going to begin.
7 Mr. Sholes, you were saying, as we
8 recessed for lunch.
9 MR. SHOLES:
10 Judge, there were attempts to point out
11 to the Court that it has happened in the
12 past, as a matter of fact, with the very
13 first witness, where plaintiffs provided to
14 us right before the witness took the stand on
15 redirect his redirect demonstrative exhibits.
16 There was a colloquy before the Court, Mr.
17 Herman and Mr. Belasic about the fact that we
18 had not seen them and, as a matter of fact,
19 some of these were things not even on an
20 exhibit list.
21 THE COURT:
22 Is that in the transcript you gave me of
23 January 29?
24 MR. SHOLES:
25 I believe it is, Your Honor. I believe
26 we highlighted those sections. We gave those
27 to Mr. Herman before we gave it to the court.
28 THE COURT:
29 And I have something on Page 12,119.
30 MR. SHOLES:
31 There's several pages of comments
32 from --
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1 THE COURT:
2 Well, I'm looking at the first one,
3 12,119.
4 MR. SHOLES:
5 Yes.
6 THE COURT:
7 If you're looking at a different page,
8 give me the number.
9 MR. SHOLES:

10 I'm looking at 12,119. What the Court
11 indicated that there was no preinstruction on
12 redirect exhibits.
13 THE COURT:
14 Well, let's look at that. I didn't --
15 have I indicated that there's some
16 instruction on redirect exhibits today?
17 MR. SHOLES:
18 No, Your Honor.
19 THE COURT:
20 Okay.
21 MR. SHOLES:
22 But redirect exhibits have never been
23 covered by any of the pretrial orders.
24 THE COURT:
25 I think we concede that.
26 MR. SHOLES:
27 Now, in that testimony with Dr. Burns,
28 Mr. Herman, before Dr. Burns took the stand,
29 I believe, handed to us his redirect
30 exhibits. We'd never seen them and had quite
31 a bit of -- as a matter of fact, redirect had
32 already begun when he gave us the exhibits.

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1 We never had an opportunity to review them.
2 And they were not identified with Dr. Burns.
3 Mr. Belasic objected.
4 THE COURT:
5 And where is that?
6 MR. SHOLES:
7 I think you're going to find that on
8 12,132, and highlighted there, Mr. Belasic
9 commented the very first objection, this is
10 not on any exhibit list since it was just
11 created last night and given to us, and
12 that's the first objection.
13 And if the Court would indulge us by
14 going to 12,135 --
15 THE COURT:
16 I'm there.
17 MR. SHOLES:
18 Mr. Belasic indicates at the bottom of
19 that page, we won't object as long as we're
20 given the same leeway, as long as Mr. Herman
21 doesn't hassle us, we will withdraw our
22 objection, and that's why we proceeded that
23 way.
24 Further, on the next page, Page 12,136,
25 Mr. Belasic indicates if you're going to let
26 their experts do it, I'm going to want my
27 medical experts to come in and we're going to
28 have a battle over these pre-prepared charts
29 instead of actual testimony. If he can get
30 his in, I can make one of my own, correct?
31 And the court says the same rulings
32 apply to both defendants, plaintiffs and

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1 defendants. The rules don't change when you
2 change sides.

3 Our contention is they were allowed to
4 give us stuff that was not on Dr. Burns'
5 exhibit list that he had just created
6 demonstratives that were used on his redirect
7 that we had not seen. They were allowed to
8 do it. We believe, Your Honor, with all due
9 respect, we should be allowed to do it.

10 THE COURT:

11 You think what I referred to on Page
12 12,135 at Lines 10 and 11, this is a summary
13 and chart -- summary or calculation -- I
14 think that fits the article -- is a
15 demonstrative and not an exhibit?

16 MR. SHOLES:

17 I believe that is correct, Your Honor.
18 It was definitely a demonstrative. Let me be
19 sure.

20 MR. RUSS HERMAN:

21 Of course, there's a lot not underlined,
22 and I'll try to be as succinct as I can. I
23 offered it at Page 12,131 a summary exhibit
24 under Louisiana Code of Evidence 1006. It
25 was not offered as a demonstrative. It was
26 offered as a summary document based on
27 various medical journals.

28 If you look at the bottom of 12,013, the
29 part that's not underlined, Mr. Belasic says
30 the more important objection is the documents
31 he's talking about here were put into
32 evidence by me. They were already in

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1 evidence by Mr. Belasic. So, there was
2 nothing wrong with making a summary exhibit
3 according to the code by documents which
4 everyone had notice and were actually used.

5 If you look then at Page 12,133, two
6 things occur that are not underlined. Number
7 1, I say they gave me the articles from which
8 1006 were made. I got them from the
9 defendants.

10 THE COURT:

11 What line are you on, please?

12 MR. RUSS HERMAN:

13 At Line 17 and 16. They gave me every
14 one of those.

15 THE COURT:

16 If you're on Page --

17 MR. RUSS HERMAN:

18 12,134. I'm at Page 12,134 now.

19 THE COURT:

20 Line 17.

21 MR. RUSS HERMAN:

22 They certainly knew about them, meaning
23 Mr. Belasic, because they gave these to me.
24 They gave me every one of these articles
25 yesterday to be used on their cross-
26 examination.

27 Then, Your Honor says, and this isn't
28 underlined, I have the article in front of
29 me. That is, Code of Evidence 1006. All I
30 did was offer a 1006 in evidence. It wasn't

31 demonstrative. It was evidence. Then, Mr.
32 Belasic, unfortunately, contrary to learned
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1 Counsel's argument that 12,136, Page 12,136,
2 he says he understands Your Honor's ruling
3 that this goes in, and I'm going to want my
4 medical experts to come in so he can do the
5 same thing. In other words, if their medical
6 journal article's used by us on cross-
7 examination, he's going to want the right to
8 issue a 1006 summary exhibit.

9 Now, to say that this transcends or is
10 contrary to a CMO directed at demonstrative
11 evidence completely off the issue and have
12 the defendants make an exhaustive search of
13 January, February, March and April and come
14 up with only this text, we believe, doesn't
15 support learned Counsel's argument
16 whatsoever. It's clear we never got the
17 documents, we didn't have time to object to
18 them, and they were never served on us and
19 that they are demonstratives. They're listed
20 as demonstratives.

21 THE COURT:
22 Anything, Mr. Sholes?

23 MR. SHOLES:
24 First, to call it an exhaustive search
25 and we only had a short time, this was the
26 one quick ready one we could find. It was
27 not on his exhibit list on his reliance list.

28 THE COURT:
29 But it apparently seems to be sanctioned
30 by 1006, or the evidence article you cited?

31 MR. RUSS HERMAN:
32 Yes, 1006. It's in evidence -- is the
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1 article on evidence that says you can --

2 MR. SHOLES:
3 It's clearly a demonstrative that we
4 were not aware of, they had not produced to
5 us, and I think the Court will agree, I think
6 it's true, that other times we've tried to
7 use 1006 -- let me back that up before I say
8 that, but I'm fairly certain.

9 THE COURT:
10 Well, Mr. Sholes, again, I'm not going
11 to try to refresh my memory on those fine
12 points, but 1006 deals with summaries, and I
13 was referring to that article because I quote
14 part of it here. The issue before me is
15 demonstrative aids and Trial Order Number 5
16 is very specific. It was not complied with.
17 To the extent it was not complied with, those
18 demonstrative aids will not be used at this
19 trial.

20 Get the jury, please.

21 THE LAW CLERK:

22 Yes, Judge.

23 THE COURT:

24 While we're waiting for the jury, has
25 there been any change in the work schedule of
26 May 5 to May 9?

27 MR. BELASIC:

28 We can agree to move the schedule. Dr.
29 Townsend won't be available to testify until
30 Monday at 1:30. We will determine what we
31 will do to fill the morning in. Perhaps we
32 may have to have a hearing on demonstratives,

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1 hopefully not, but we will certainly agree to
2 the jury's request.

3 THE COURT:

4 I will instruct the jury then that we
5 will take testimony before them on May 5,
6 Monday, which was scheduled as a jury off
7 day, and the jury will be off on Friday, May
8 9th of that same week, which will be a
9 change. I will send a memorandum around to
10 everyone setting that out. All right. Thank
11 you.

12 MR. SHOLES:

13 Your Honor, if I may, can I get
14 clarification on one point?

15 THE COURT:

16 Mr. Sholes?

17 MR. SHOLES:

18 Are we now allowed to use exhibits that
19 were -- that are on the exhibit list with Dr.
20 Norrell?

21 THE COURT:

22 My understanding is that as to redirect
23 exhibits, my orders are silent, and I made a
24 comment earlier that the next tobacco class
25 action will be a little better than this one,
26 but I have no prohibition against using them
27 as long as they were previously listed and
28 noted to the other side. But there is a
29 specific provision for demonstratives, and
30 that's what I'm relying on for my last
31 ruling.

32 MR. SHOLES:

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1 I'd like to point out to Counsel at this
2 point we will attempt to introduce the
3 exhibits which covers the PSA.

4 MR. RUSS HERMAN:

5 PSAs?

6 MR. SHOLES:

7 Public service announcements.

8 MR. RUSS HERMAN:

9 Your Honor, if there are some witnesses
10 in the courtroom, we'd like them identified,
11 because if they're not experts, we want them
12 sequestered.

13 MR. SHOLES:

14 Everyone in the courtroom is an expert
15 witness that we would call.

16 MR. RUSS HERMAN:

17 We would like them identified.
18 THE COURT:
19 Anyone in the room who would expect to
20 be called as a witness, raise your hand.
21 THE COURT:
22 Your name, sir?
23 MR. ROWELL:
24 Peter Rowell.
25 THE COURT:
26 Anyone else?
27 MR. SHOLES:
28 Your Honor, while we're waiting for the
29 jury, the exhibits that we're going to try to
30 introduce are the --
31 THE COURT:
32 Mr. Herman is not listening to you.

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1 Maybe it would be better if he and Mr. Herman
2 were listening.
3 Would you start again?
4 THE CLERK:
5 All rise for the jury, please.
6 (Jury seated.)
7 THE COURT:
8 Please be seated.
9 Mr. Sholes?
10 MR. SHOLES:
11 Good afternoon.

12 REDIRECT EXAMINATION BY MR. SHOLES:

13 Q. Professor Norrell, earlier, Mr. Murray asked
14 you about a bunch of things. He went through a
15 litany of things and asked you if those things were
16 changed since the filing of this lawsuit. Do you
17 know whether or not those things that had -- being
18 changed or being done had anything whatsoever to do
19 with the filing of this lawsuit?

20 A. They did not have anything to do with the
21 filing of this lawsuit.

22 Q. Now, sir, he also asked you about some
23 advertisements and it's correct that there were
24 other things that were out there being told to the
25 public on TV other than just tobacco company
26 advertisements; is that correct?

27 A. Yes, sir. Public service announcements ran
28 on television, of course, in the 1960s, and then the
29 public service announcements have continued even
30 though the television advertisements of cigarettes
31 stopped in 1972.

32 Q. Sir, is it correct that you reviewed Exhibit
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1 SA-4113, and is that a compilation of some of the
2 public service announcements that were run on TV?

3 A. Yes, it is.

4 MR. SHOLES:

5 Your Honor, at this time, we would like
6 to move to introduce SA-4113.

7 THE COURT:

8 Objection?

9 MR. STEPHEN MURRAY:

10 Yes, Your Honor. May we approach.
11 (Whereupon, a sidebar conference is held
12 as follows:)
13 MR. STEPHEN MURRAY:
14 Your Honor, that exhibit is not on any
15 list that has been provided to us.
16 MR. SHOLES:
17 If it's on our exhibit list -- it was
18 not listed as a specific exhibit with this
19 witness, but it is on our exhibit list and
20 the rule is that for purposes of redirect, it
21 does not have to be listed. We only want to
22 play a portion of these. We only want to
23 play three of them, which are the three that
24 you have already seen on that previously
25 submitted demonstrative.
26 MR. STEPHEN MURRAY:
27 Are they on his reliance list?
28 MR. SHOLES:
29 Exhibits do not -- on redirect do not
30 have to be on the reliance list.
31 THE COURT:
32 Well, the trial orders are silent on

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1 that issue. That's the problem. If it's on
2 the exhibit list -- are you saying that they
3 were used in past?
4 MR. SHOLES:
5 No. I'm saying that they are on the
6 exhibit list.
7 THE COURT:
8 You said something about you used four
9 of them --
10 MR. SHOLES:
11 The compilation has 28. We only want to
12 use three of them, and those three we gave
13 him on that list of demonstratives we gave
14 them that you've seen.
15 MR. STEPHEN MURRAY:
16 Now you're going to ask him about 28 of
17 them, and I have no way to know --
18 MR. SHOLES:
19 You have the three we want to show.
20 MR. STEPHEN MURRAY:
21 What?
22 MR. SHOLES:
23 You have the three on that demonstrative
24 that we're going to show.
25 MR. STEPHEN MURRAY:
26 You going to ask him about the three or
27 about the 28?
28 MR. SHOLES:
29 I'm only going to ask him about the
30 three.
31 THE COURT:
32 Are they on the demonstrative list?

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1 Well, let's look at the demonstrative list.
2 And how are they identified, Mr. Sholes?

3 MR. SHOLES:
4 Tammy, give me the demonstrative number,
5 please.
6 MS. COKER:
7 1082.
8 MR. RUSS HERMAN:
9 I can help, Mr. Sholes.
10 MR. RUSS HERMAN:
11 Mr. Sholes, here's the list.
12 MR. SHOLES:
13 Here we go.
14 Thank you, Mr. Herman.
15 MR. RUSS HERMAN:
16 You're welcome.
17 MR. STEPHEN MURRAY:
18 Submitted.
19 THE COURT:
20 Overruled.
21 (End of sidebar.)
22 EXAMINATION BY MR. SHOLES:
23 Q. Professor Norrell, do these public service
24 announcements -- illustrative of what else was out
25 there available to the public and being shown to the
26 public on smoking and health?
27 A. Yes, sir.
28 Q. Were they running back in the '70s and
29 continuing to run throughout time?
30 A. Yes, sir. They began in the '60s and they
31 continued through in various forms today.
32 MR. SHOLES:
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1 Your Honor, at this time, we'd move to
2 public an excerpt of SA-4113.
3 THE COURT:
4 I've heard the arguments and the
5 objections and it is overruled.
6 You may publish.
7 MR. SHOLES:
8 May we turn the lights down?
9 MR. SHOLES:
10 Proceed, Bert.
11 (Whereupon, demonstratives are shown to
12 the jury.)
13 MR. SHOLES:
14 May we have the lights back on?
15 Your Honor, we have no further
16 questions.
17 THE COURT:
18 Step down.
19 Next witness for the defense?
20 MR. SCHNEIDER:
21 Your Honor, defense calls Dr. Peter
22 Rowell.
23 THE COURT:
24 I presume this witness is discharged?
25 You may leave, Doctor. Thank you.
26 Step up to be sworn, please.
27 PETER P. ROWELL, Ph.D.,
28 after being first duly sworn by the Clerk,
29 testified as follows:
30 THE COURT:

31 Have a seat, Doctor. That microphone is
32 turned on. If you speak into it, everybody
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1 can hear you, you won't have to raise your
2 voice.
3 Mr. Schneider, ready to proceed?
4 MR. SCHNEIDER:
5 Yes, Your Honor.
6 Good afternoon, ladies and gentlemen.
7 Good afternoon, Your Honor, Counsel.
8 DIRECT EXAMINATION BY MR. SCHNEIDER:
9 Q. Good afternoon, Dr. Rowell?
10 A. Good afternoon.
11 Q. Let's get you to formally introduce yourself
12 to the jury.
13 A. My name is Peter Rowell. I'm a professor of
14 pharmacology at the University of Louisville.
15 Q. Are you here, Dr. Rowell, to offer opinions
16 in the area of nicotine pharmacology?
17 A. Yes, I am.
18 Q. Have you published peer-reviewed articles in
19 the field of nicotine pharmacology?
20 A. Yes, I have.
21 Q. And have your articles been cited by the
22 United States Surgeon General?
23 A. Yes.
24 Q. All right. Let's go and try to find out a
25 little bit about your background and your
26 qualifications. Tell the jury, where do you work,
27 Doctor?
28 A. I work in Louisville, Kentucky, at the School
29 of Medicine, in the Department of Pharmacology.
30 Q. So, you and your family reside in Louisville
31 and you came down to testify here in this case at
32 New Orleans?

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1 A. That's right.
2 Q. What is your current position at the
3 University of Louisville, School of Medicine?
4 A. I am a full professor. My current position
5 is a professor of neuropharmacology, which is a
6 subset of pharmacology, and also assistant for
7 research at the School of Medicine.
8 Q. How long have you been at the University of
9 Louisville School of Medicine?
10 A. A little over 25 years.
11 Q. And what do you do there? I take it you
12 teach?
13 A. Yes, I do. I teach. I teach the medical
14 students and, also, dental students and nursing
15 students and other students. Also graduate
16 students. I do mainly research. I run a research
17 lab involved in the study of nicotine, and I do
18 administrative work for the dean and the School of
19 Medicine in general.
20 Q. So, your teaching is -- of the students of
21 the School of Medicine there who are hoping to go on
22 to become doctors?
23 A. That's correct.

24 Q. Can you estimate for us over your 25 years
25 how many doctors have you had the benefit of
26 teaching pharmacology?
27 A. Between 2,000 -- it's over 2,000 medical
28 students.
29 Q. You say you also research?
30 A. Correct.
31 Q. Now, research is doing laboratory
32 experiments?
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1 A. Yes. These are laboratory experiments.
2 Q. Is research also reading scientific
3 literature and determining what scientists have
4 found and published?
5 A. Absolutely.
6 Q. How much of your time do you spend doing
7 laboratory research?
8 A. About half my time, or maybe a little over,
9 55 percent.
10 Q. Okay. Let's go a little bit further back in
11 time, and tell us where you grew up. We don't need
12 to hear a David Copperfield type of stuff, but tell
13 us where you grew up and your educational
14 background.
15 A. I'm originally from St. Petersburg, Florida,
16 and I grew up in Florida. I went to high school
17 there and then went to Stetson University for my
18 undergraduate degree in DeLand, Florida.
19 Q. What was that degree in?
20 A. I got a degree in psychology and a minor in
21 chemistry at Stetson.
22 Q. And what year was that?
23 A. That was in 1968.
24 Q. And after you got that degree in psychology,
25 did you continue your schoolwork right at that
26 point?
27 A. Not exactly at that point.
28 Q. What happened?
29 A. Well, that was the Vietnam war era. So, I
30 was inducted into the Army in 1969 and spent two
31 years in the armed services, in the Army.
32 Q. What positions did you hold, what rank did
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1 you hold in the armed services?
2 A. Well, my first rank was a second lieutenant
3 and I was first at Fort Sam Houston, Texas, and then
4 later on in a M.A.S.H. unit in Fort Meade, Maryland.
5 The last year, I was sent to Vietnam and I was a
6 first lieutenant with the 101st Airborne Division in
7 an infantry battalion.
8 Q. When you were in Viet Nam, were you working
9 in a M.A.S.H. unit or out in the field in combat?
10 A. I was a little further out in the field than
11 that. It was at a fire base with an infantry
12 battalion.
13 Q. Did you eventually get out of the service?
14 A. Yes.
15 Q. What year was that?
16 A. 1971.

17 Q. When you left the military, did you receive
18 any awards?
19 A. Yes.
20 Q. What were those?
21 A. I received the Bronze Star in 1971, also the
22 Combat Infantry badge and the Air Medal for air
23 operations.
24 Q. Having served your country, you came back to
25 the United States and pursued your education
26 further?
27 A. Correct.
28 Q. Where did you go to school?
29 A. Pursued graduate work at the University of
30 Florida, Gainesville, Florida, and entered the
31 College of Medicine, School of Medicine there, in
32 the field of pharmacology.

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1 Q. Did you ultimately receive a Ph.D.?
2 A. Yes.
3 Q. That's a doctor of philosophy in a field of
4 science?
5 A. Right.
6 Q. In what field?
7 A. Research degree in the field of pharmacology.
8 Q. And I think the jury may know what the field
9 of pharmacology is because we've heard a great
10 number of witnesses in this case, but remind us all.
11 What is pharmacology?
12 A. Okay. Pharmacology is the study of how drugs
13 work in the body. It's not pharmacy, which is
14 dispensing and compounding drugs and putting them
15 into the body. Once it gets into the bloodstream,
16 it goes to whatever organ it is, it's kind of the
17 molecular action of how drugs work, how they
18 interact with the body and what they do.
19 Q. All right. When you were in graduate school
20 at the University of Florida, what was the focus of
21 your work and your research there?
22 A. It was on how drugs work in the nervous
23 system, particularly drugs that work on a subset of
24 nerves called the acetylcholine nerves, or
25 cholinergic nerves. I included nicotine in that
26 work.
27 Q. Did you do study on the effect of nicotine on
28 biological systems when you were at University of
29 Florida getting your Ph.D.?
30 A. Yes, I did.
31 Q. What was the reason for your studying
32 nicotine at the University of Florida when you were

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1 getting your education there?
2 A. Nicotine is a drug that's been used for
3 really over 100 years, to study that acetylcholine
4 system. It was a fundamental compound for
5 developing the concept of what we call receptors,
6 which is what drugs and even our own indigenous body
7 chemicals fit into. Nicotine works on these
8 particular receptors, which actually have now been
9 called nicotinic receptors, because that's where

10 they were studied. All our research uses nicotine
11 to study the nervous system.
12 Q. We will go over each of those terms you used,
13 receptors, acetylcholine, nicotine, perhaps in more
14 depth, but we will go through your background a
15 little bit.
16 A. Okay.
17 Q. Have you ever been an employee of a tobacco
18 company?
19 A. No.
20 Q. Yet, nonetheless, you have researched
21 nicotine when you were with the college?
22 A. Right.
23 Q. And then when you were in graduate school.
24 Have you done research on nicotine since 1971
25 forward?
26 A. Yes. That's been the focus of my research
27 throughout my career.
28 Q. All right. After you got your Ph.D., what
29 year was that, 1975?
30 A. 1975, correct.
31 Q. What did you do when you got that Ph.D.?
32 A. Then, I pursued further graduate --

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1 postgraduate work at Vanderbilt University medical
2 school, in Nashville, from 1975 to 1977, as a
3 research associate or a postdoctoral position.
4 Q. Vanderbilt is in Nashville. What kind of
5 work did you do there? What kind of research?
6 A. Again, it was a continuation of my nicotine
7 research work, and we were investigating nicotine as
8 it applied to maternal cigarette smoking and birth
9 weight of babies.
10 Q. You were actually doing studies to see
11 whether nicotine affected pregnancy and the birth
12 weight of children born of smoking mothers?
13 A. Right. We were investigating whether
14 nicotine affected the transport of nutrients across
15 the placenta of smoking mothers.
16 Q. How long did you remain at Vanderbilt?
17 A. Two years.
18 Q. Then, what happened to you?
19 A. Then, I was offered a position at Louisville,
20 at the University of Louisville, School of Medicine,
21 and went up there 1977.
22 Q. How did you -- I know it's not that far from
23 Nashville to Louisville, but how did you manage to
24 get there? How were they attracted to you?
25 A. There was a new professor chairman of the
26 Pharmacology Department who had just come on board
27 the year before and he was given several faculty
28 positions, and he actually talked to me at a Chicago
29 meeting and was interested in my work with nicotine
30 because the State of Kentucky had begun a University
31 of Kentucky Tobacco and Health Research Institute,
32 which taxes the cigarettes and applies that tax to

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1 research involving nicotine and other aspects of
2 smoking, and Dr. Waddell was the new chairman's

3 name, thought that I would be a good fit for being
4 able to obtain research funding to continue my work
5 with nicotine at Louisville.

6 Q. And you've been there 27 years?

7 A. Right.

8 Q. During those 27 years that you were there,
9 did you receive funding from the organization that
10 you mentioned, the Kentucky Tobacco and Health
11 Research Institute?

12 A. Yes, I did.

13 Q. Now, is that institute a state agency of the
14 government of Kentucky?

15 A. Yes. That's set up by the state legislature
16 of the state.

17 Q. You said that in Kentucky they tax cigarettes
18 and provide funding through that agency?

19 A. Correct.

20 Q. And you received grants from that
21 organization for how many years?

22 A. Off and on, for, I don't know, ten or 12
23 years, probably.

24 Q. Did there ever come a time when you applied
25 for grant funding to the federal government?

26 A. Yes.

27 Q. And when did you begin receiving or have you
28 ever begun receiving federal grant money?

29 A. Yes, I have.

30 Q. Is it correct, Dr. Rowell, that professors at
31 universities, to do their research, they typically
32 need funding from either a private source or a state
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1 agency or a federal agency? That's just the way the
2 system works, right?

3 A. That's correct.

4 Q. So, professors like you compete for grant
5 money to fund the research that you want to do?

6 A. Yes.

7 Q. So, for some period of time, the federal
8 government has given you grant money to do research
9 on things dealing with pharmacology?

10 A. That's correct.

11 Q. Now, have those grant monies come from the
12 National Institute of Health, NIH?

13 A. Yes.

14 Q. What is the National Institute of Health?

15 A. That's an institute that really provides
16 funding through a number of subagencies for heart
17 research and cancer research and drug research of
18 all kinds. There are several agencies under that,
19 or institutes under that.

20 Q. For example, is the National Cancer Institute
21 part of the National Institute of Health?

22 A. Yes.

23 Q. Is the National Institute on Drug Addiction
24 also a -- one of those agencies under the umbrella
25 of the National Institute of Health?

26 A. Yes. The National Institutes of Drug Abuse,
27 right.

28 Q. Drug abuse. I'm sorry. Has that institute
29 funded your research?

30 A. Yes.

31 Q. Now, in order to get funded by the federal
32 government, do they have to recognize you as a
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1 respected scientist in the field that you're seeking
2 to research?

3 A. Yes. Those are very critically evaluated
4 grant applications.

5 Q. And for your career for 30 years, you have
6 been focusing on research on nicotine pharmacology;
7 is that correct?

8 A. Right.

9 Q. Have you worked on chemicals other than
10 nicotine?

11 A. Yes.

12 Q. Like what? Give us some examples.

13 A. Well, I've worked on a lot of nicotine
14 analogs or agents that are kind of like nicotine and
15 work in little bit different ways, epibatidine,
16 anabasine. I've worked on cocaine, amphetamines.
17 They're psychostimulant drugs. Then, I've worked on
18 other drugs, glutamate and GABA and some other
19 compounds.

20 Q. All right. Did there come a time when you
21 were contacted by counsel for tobacco companies who
22 asked you to serve as an expert consultant or
23 consider serving as an expert consultant on the
24 issue of nicotine pharmacology?

25 A. Yes.

26 Q. When did that happen?

27 A. 1995.

28 Q. 1995. So, from 1971, when you first started
29 down in Florida studying nicotine pharmacology, all
30 the way to 1995, had any of your research on
31 anything you had ever been -- done been funded by a
32 tobacco company?

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1 A. No.

2 Q. I understand, Doctor, today you're being paid
3 for your time to come down here and your expenses to
4 come down and give testimony, right?

5 A. That's right.

6 Q. When you were contacted in 1995, what is it
7 that you were asked to do or to consider doing?

8 A. I was asked to do a review of the published
9 literature that was available to all scientists,
10 peer-reviewed published literature that was out in
11 the open on the important significant advances that
12 had happened in nicotine pharmacology. I, of
13 course, was familiar with a lot of that, being in
14 the field, but we were asked to put together a
15 report on the important significant scientific
16 advances that had to do with nicotine and how
17 nicotine worked.

18 Q. For doing that work, you were going to be
19 paid for your time doing that work, your report?

20 A. We put that in as a contract. I did that
21 with a colleague. I didn't profit personally from
22 that.

23 Q. Who was your colleague that worked with you

24 on this report?
25 A. Dr. Laurence Carr.
26 Q. Now, Dr. Rowell, while you yourself did not
27 receive funding from a tobacco company, did you ever
28 work with any scientist that had received funding
29 from a tobacco company to do research?
30 A. Yes.
31 Q. For example?
32 A. The Council for Tobacco Research has funded a
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1 lot of scientists over the years, and my
2 postdoctoral, Dr. Rama Sastry, part of his research
3 was funded by CCR money, not directly from tobacco
4 companies.
5 Q. Were you aware of that at the time, back at
6 Vanderbilt, were you aware that Dr. Sastry's work
7 was being funded by Council for Tobacco Research?
8 A. No, because I wasn't involved in grant
9 applications or the distribution of the funds.
10 Q. Have you worked with other scientists over
11 the course of your career that have had research
12 funded by tobacco industry?
13 A. Well, I mean, I collaborate with individuals
14 who have done that, but probably not worked
15 directly. When I was on a sabbatical in 1989, Dr.
16 Susan Wonnacott had some funding from British
17 American Tobacco, I believe.
18 Q. All right. Let's go back to the assignment
19 that you were asked to undertake. I think you said
20 that you were asked to review the scientific
21 literature that had been published that related to
22 nicotine and its effect on the body?
23 A. Right.
24 Q. Is that correct?
25 A. Yes.
26 Q. Were you asked to go back in time and do that
27 sort of as a historical review?
28 A. Well, basically, we were just given that kind
29 of overview, but we did, in fact, go back in time to
30 the beginning of when nicotine was first isolated
31 and discovered.
32 Q. And when was that?
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1 A. That was in the 1840s, 150-something years
2 ago.
3 Q. Have there been articles published in the
4 scientific literature concerning nicotine and its
5 affect on the body since the -- since 1850s forward?
6 A. Yes, thousands.
7 Q. Thousands of articles. And did you and Dr.
8 Carr actually review these thousands of articles?
9 A. We probably reviewed about 1,000 or so
10 articles, yes.
11 Q. You're not going to tell us about all
12 thousand here today, are you?
13 A. I hope not.
14 Q. I do, too. But you did prepare a paper, a
15 summary of what you found in the literature?
16 A. Yes.

17 Q. In terms of reviewing the literature, what
18 sources did you look to to find articles and studies
19 about nicotine?
20 A. Well, we used a number of different sources.
21 We used a number of books that were in the 1960s and
22 early on, the Larson, Haag and Silvette, which is
23 kind of an encyclopedia of the work in nicotine up
24 to about the early 1960s.
25 Q. Can I stop you there a moment?
26 A. Sure.
27 Q. When you say Larson, Silvette, are you
28 referring to this book that I have in my hand
29 entitled Tobacco, Experimental and Clinical Studies
30 by Professors Larson, Haag and Silvette?
31 A. Yes.
32 Q. For the record, this book has been admitted
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1 into evidence as AN-0000776, but, Doctor, you said
2 you looked in this book for articles on nicotine,
3 correct?
4 A. That's right.
5 Q. Prior to getting your assignment or being
6 retained as an expert consultant in 1995, had you
7 ever seen this book prior to that time?
8 A. Yes.
9 Q. Where had you seen it?
10 A. I have a copy of that book. It's my own copy
11 in my office. So, I refer to it, have always
12 referred to it.
13 Q. Have you had it -- for how many years have
14 you had a copy of this in your office?
15 A. Oh, gosh, probably since the early 1980s,
16 probably.
17 Q. All right. And you -- you read it and
18 reviewed it prior to being contacted by any tobacco
19 company?
20 A. Yes.
21 Q. Was it considered by you a basic source of
22 pharmacology with respect to the substance of
23 nicotine?
24 A. Yes. It's kind of a review of the literature
25 that's been published from the very early days right
26 up until when that was published in 1962.
27 Q. All right. Now, was this the only source
28 that you looked at to find articles about nicotine?
29 A. No.
30 Q. Where else did you look?
31 A. There are other books or reviews. For
32 example, there's a book called Tobacco Alkaloids in
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1 1965. The National Library of Medicine puts out a
2 whole series of annual research called the Index
3 Medicus. We looked at those. Since 1966, that has
4 been computerized and you can actually go in and do
5 a computer search for keywords, like nicotine and
6 things like that. We use the computer database
7 quite a bit since that started in 1966.
8 Q. When you would use the computer base, would
9 you find actual hard copies of articles and print

10 them out or get them from libraries and read them?
11 A. Well, we would find the citation to the
12 article and then we would request it from the
13 library or get it also electronically. We can get
14 the hard-copy article. So, we did, in fact, read
15 the articles, yes.
16 Q. Now, at the end of the process -- how long
17 did the process take you?
18 A. Took about a year and a half.
19 Q. And this was working both with you and Dr.
20 Carr?
21 A. Right, and that's, of course, off and on. We
22 didn't do that -- because we still had a full-time
23 job.
24 Q. Was Dr. Carr also on the faculty at
25 University of Louisville?
26 A. Yes.
27 Q. What was his area of expertise?
28 A. He was also involved with nicotine research
29 more as it applied to neuroendocrine effects, or
30 hormone effects, but he was the other
31 neuropharmacology colleague.
32 Q. All right. Did you ultimately complete a
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1 paper that summarized your historical review of
2 nicotine's actions as demonstrated in the published
3 literature?
4 A. Yes.
5 MR. SCHNEIDER:
6 I would like to call for Exhibit
7 GK-000350 to be placed on the screen for the
8 witness, Counsel and the Court.
9 EXAMINATION BY MR. SCHNEIDER:
10 Q. Do you see that document before you, Dr.
11 Rowell?
12 A. Yes.
13 Q. Do you recognize that to be the first page of
14 your historical review of nicotine's actions?
15 A. Right. That's the cover to the review.
16 MR. SCHNEIDER:
17 Your Honor, I would request permission
18 to publish this document and admit it into
19 evidence.
20 MR. BRUNO:
21 We have no objection, Your Honor.
22 THE COURT:
23 You may publish, and it will be
24 received.
25 EXAMINATION BY MR. SCHNEIDER:
26 Q. I have up on the screen for the jury this
27 document. Is that the cover page of your report
28 that you prepared over a year and a half of study on
29 the review of nicotine's actions?
30 A. Yes, it is.
31 Q. All right. Approximately how long is that
32 paper?

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1 A. That paper's about 60-something pages long,
2 not including about that many pages of citations.

3 So, it's over 100 pages, I guess.
4 Q. Does that --
5 MR. SCHNEIDER:
6 Bert, are you able to go to the Table of
7 Contents, which is the next page?
8 THE COURT:
9 You may publish it.
10 MR. SCHNEIDER:
11 If we may have permission to publish?
12 Are you able to blow that up at all,
13 Bert, just the whole page, if you could?
14 EXAMINATION BY MR. SCHNEIDER:
15 Q. Doctor, does this Table of Contents
16 illustrate some of the topics you studied in your
17 historical review?
18 A. Yes. That's the first page. It continues
19 on, but that's the first part of the review.
20 Q. You studied the chemistry and pharmacokinetics
21 of nicotine?
22 A. Right.
23 Q. And nicotinic receptors?
24 A. Correct.
25 Q. And the effect of nicotine in the peripheral
26 nervous system?
27 A. Right.
28 Q. And the central neurochemical effects of
29 nicotine?
30 A. Yes.
31 MR. SCHNEIDER:
32 May we have permission to publish the
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1 next page of the Table of Contents, Your
2 Honor?
3 THE COURT:
4 You may publish it.
5 MR. SCHNEIDER:
6 Go ahead and blow that whole page up so
7 we can all see it on this side of the
8 courtroom.
9 EXAMINATION BY MR. SCHNEIDER:
10 Q. And other areas, including nicotine as a
11 determinate of smoking behavior, correct?
12 A. Yes.
13 Q. And these articles and literature that you
14 cited in this paper, had you reviewed them in the
15 course of your career in pharmacology before being
16 retained by the tobacco company?
17 A. Most of them, yes.
18 Q. All right. Now, this report, this is a
19 report summarizing your research into the
20 literature. Is this a peer-reviewed journal
21 article?
22 A. No.
23 Q. Has this report been published in any way?
24 A. Yes.
25 Q. In what form?
26 A. This was put together as a -- just a book
27 about a year and a half ago, but it was not
28 peer-reviewed. We just submitted it for
29 publication, it was published and it's now a book.
30 Q. Was it published in its entirety or just

31 various sections from it?
32 A. It's published up to Chapter 7, right here.
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1 Q. Dr. Rowell, you were originally retained to
2 be an expert consultant to do this work. Did there
3 ever come a time when you were retained to possibly
4 serve as an expert witness?
5 A. Yes.
6 Q. To come to court and testify about your work
7 and research?
8 A. Yes.
9 Q. Have you, in fact, testified in tobacco cases
10 involving these defendants as an expert in the field
11 of nicotine pharmacology?
12 A. Yes, I have.
13 Q. How many times have you testified before a
14 jury on that issue?
15 A. Two other times. Two times before this.
16 Q. And was that in Minnesota and Ohio?
17 A. That's correct.
18 Q. Okay. Now, was the only task that you were
19 ever hired to do was to do this historical
20 literature review and perhaps serve as an expert
21 witness, or were there any other assignments you
22 were asked to consider undertaking?
23 A. Yes. There was a continuation of this
24 process.
25 Q. What else -- what other tasks were you asked
26 to explore?
27 A. Well, after we had finished writing this
28 review of the published literature, we were asked if
29 we would then review internal company documents from
30 the tobacco -- from various tobacco companies, and
31 read those documents and make a determination of
32 whether there was information in those internal
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1 documents which had it been published would have
2 made a significant advancement or what was already
3 known in the published literature.
4 Q. Let me see if I understand this. You were
5 asked to review certain tobacco company documents
6 and to compare what was in them and to see if there
7 was anything new or a break through and compared to
8 what was already published in the literature?
9 A. Right.
10 Q. How many such documents did you review?
11 A. Several thousand documents over these period
12 of years.
13 Q. How were these documents selected? Or what
14 were you told about their selection?
15 A. My understanding is that those documents had
16 been identified by the plaintiffs in cases, certain
17 cases, as being documents that did, in fact, contain
18 some new or important information about nicotine.
19 Q. So, in other words, you were asked to review
20 documents that plaintiffs were selecting from the
21 files of companies in litigation to see if you
22 thought they demonstrated anything new compared to
23 what you saw in the published literature?

24 A. That's correct.
25 Q. All right. And, Doctor, did you undertake
26 that review by yourself?
27 A. No, I did that, again, with Dr. Carr, because
28 he had also written this with me.
29 Q. Did you, in fact, complete that review?
30 A. Well, that review is kind of ongoing, but we
31 complete it -- as we receive documents, we review
32 them.

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1 Q. Is it your understanding, Doctor, that some
2 of the documents you reviewed have been introduced
3 as exhibits -- as evidence in this case?
4 A. Yes, that's my understanding.
5 Q. All right. Now, I want to talk a little bit
6 about other things, other articles that you have
7 published. I know you've worked in the field of
8 nicotine pharmacology for 30 years. So, I assume
9 you've published an article or two, correct?
10 A. Yes. Right.
11 Q. How many peer-reviewed articles have you
12 published in the field of nicotine pharmacology?
13 A. Around 40, I guess --
14 Q. All right.
15 A. -- peer-reviewed articles.
16 Q. Have those articles dealt with the effects of
17 nicotine on the brain, on the nervous system?
18 A. Yes. Most of them.
19 Q. Do they typically involve animal subjects or
20 human subjects?
21 A. These were almost all animal subjects.
22 Q. All right. And in terms of your work in the
23 field and publishing research, have you also
24 reviewed studies of others, other scientists?
25 A. Sure.
26 Q. Have you relied on the work of other
27 scientists in reaching conclusions that you make in
28 your articles?
29 A. Yes, I have.
30 Q. And will you also rely on the research that's
31 been done in the field of nicotine pharmacology in
32 giving your opinions here today?

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1 A. Yes.
2 Q. Now, you have told us that your work has
3 focused on the effect of nicotine on the nervous
4 system. What is the nervous system?
5 A. The nervous system is one of the several
6 systems of the body. We have the cardiovascular
7 system, which is our heart and blood vessels, and
8 the endocrine system, which is our hormones, and the
9 immune system and such. The nervous system is the
10 system that uses nerve cells to convey information
11 really between nerves and sometimes out to the
12 organs of the body, to speed up the heart or to
13 cause you to sweat or dilate your pupils. These are
14 all caused by nerve cells conducting information
15 down to either systems or other nerves.
16 Q. Does the nervous system also include the

17 brain?
18 A. Yes.
19 Q. Has your work included the study of the
20 brain?
21 A. Right. That's a major part of the nervous
22 system called the central nervous system.
23 Q. And you studied the anatomy of the brain?
24 A. Yes.
25 Q. And you have studied how the brain functions?
26 A. Yes.
27 Q. And you've studied how nicotine works in the
28 brain?
29 A. Right. That's been the focus of my studies.
30 Q. All right. Have you done any work at all
31 that has involved the study of human subjects at
32 all?

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1 A. A few studies, very few.
2 Q. But have you reviewed the literature that's
3 been published where other scientists have studied
4 using human subjects?
5 A. Right. We do a lot of that, but in the
6 laboratory, it's mainly animals, and we do a lot of
7 studies on the literature for human subjects.
8 Q. I think you told us your work has been peer-
9 reviewed and published. Have any of your research
10 findings been the first finding of its kind?
11 A. Yes.
12 Q. Can you give us an example of such a first
13 finding?
14 A. Well, in 1983, we published a study showing
15 that there were excitatory nicotinic receptors in
16 the brain which stimulated the release of
17 acetylcholine, a neurotransmitter I talked about
18 earlier. That was the first time it was shown that
19 there were excitatory receptors on these.
20 Q. Doctor, I want to see if I have in mind the
21 article that you're referring to. Is that an
22 article that you wrote in 1984 entitled "Nicogenic
23 Stimulation of 3H Acetylcholine Release From Mouse
24 Cerebral Cortical Synaptosomes"?

MR. SCHNEIDER:

26 Let me ask you to put up on the screen
27 before the witness GK-00554 for His Honor and
28 opposing counsel.

EXAMINATION BY MR. SCHNEIDER:

30 Q. Doctor, do you recognize that document before
31 you?
32 A. Yes.

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1 MR. SCHNEIDER:

2 Can you go to the second page of that
3 for the Court and for Counsel and for the
4 witness.

EXAMINATION BY MR. SCHNEIDER:

6 Q. Doctor, if you could take a look at that
7 second page?
8 A. Yes, I see it.
9 Q. Is that an article entitled "Nicogenic

10 Stimulation of 3H Acetylcholine Release From Mouse
11 Cerebral Cortical Synaptosomes"?
12 A. You were great up until the last word.
13 Q. How do you pronounce that word?
14 A. Synaptosomes, named after synapses.
15 MR. SCHNEIDER:
16 Your Honor, I would request permission
17 to publish and admit it into evidence.
18 MR. BRUNO:
19 There's no objection.
20 THE COURT:
21 You may publish and it is received.
22 MR. SCHNEIDER:
23 Could you highlight that title? I've
24 murdered it.
25 EXAMINATION BY MR. SCHNEIDER:
26 Q. Is that the title of your article?
27 A. Yes.
28 Q. Are you going to explain some of this today
29 in terms that even I can understand, I hope?
30 A. I will attempt to do that.
31 Q. Has your research been cited by the U.S.
32 Surgeon General?
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1 A. Yes.
2 MR. SCHNEIDER:
3 Let me ask, if you could, to pull up
4 Exhibit PX-904. Plaintiff's Exhibit 904,
5 previously admitted into evidence for the
6 Court, the witness and opposing counsel.
7 EXAMINATION BY MR. SCHNEIDER:
8 Q. Dr. Rowell, do you see before you the Surgeon
9 General report of 1988?
10 A. Well, I see the -- a page, introductory page
11 for it, yes.
12 MR. SCHNEIDER:
13 Your Honor, we would request permission
14 to publish Page 81 of this Exhibit PX-904
15 that's already been admitted into evidence.
16 THE COURT:
17 No objection, I presume?
18 MR. BRUNO:
19 No, Judge.
20 MR. SCHNEIDER:
21 Can you put up for the jury and the
22 witness Page 81 of the 1988 Surgeon General
23 report.
24 EXAMINATION BY MR. SCHNEIDER:
25 Q. First of all, Doctor, this is Page 81 of the
26 1988 Surgeon General report?
27 A. That's right.
28 Q. And the 1988 Surgeon General report, was that
29 Surgeon General report in which the Surgeon General
30 found nicotine -- cigarette smoking to be addictive,
31 correct?
32 A. That's what the report was called, right.
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1 Q. All right. On Page 81 of this report --
2 MR. SCHNEIDER:

3 Can you highlight the important part
4 there, Bert, where there's a citation to some
5 research articles?
6 EXAMINATION BY MR. SCHNEIDER:
7 Q. Is there a citation there in the 1988 Surgeon
8 General work to your work in the field of nicotine
9 pharmacology?
10 A. Right.
11 Q. Now, Doctor, do you continue to do research
12 on the impact of nicotine on the brain even today?
13 A. Yes.
14 Q. Are you a member of any scientific research
15 organizations?
16 A. Yes, I am.
17 Q. Can you give us some examples of those?
18 A. I'm a member of the American Society for
19 Neurochemistry, the International Society for
20 Neurochemistry, the International Brain Research
21 Organization, Society for Research on Nicotine and
22 Tobacco, American Society for Pharmacology and
23 Experimental Therapeutics. I mean, others.
24 Q. The list goes on. Are there special
25 requirements to be admitted into those societies?
26 A. Yes.
27 Q. During your career as a pharmacologist, have
28 you been trained on the effects, the withdrawal
29 effects, of various drugs?
30 A. Yes.
31 Q. Do you keep up with the scientific literature
32 with respect to the withdrawal effects to be
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1 recorded to be associated with various drugs related
2 to caffeine, to cocaine, nicotine and other drugs?
3 A. Yes.
4 Q. With respect to smoking behavior, Doctor,
5 when I use that term and you use that term in your
6 article, what do you mean by that? What is smoking
7 behavior?
8 A. Smoking behavior encompasses a whole range of
9 behavioral activities that are associated with
10 smoking, from the manipulation of the cigarette to
11 the repetitive nature of it, the ritualistic nature
12 of it as it is associated with different activities,
13 like drinking coffee or watching television or
14 different things. So, it's a complex behavioral
15 activity.
16 Q. All right. Have you studied the literature,
17 the scientific literature, that relates to smoking
18 behavior and its relationship to nicotine?
19 A. Yes.
20 Q. Have you measured the levels of nicotine in
21 the bloodstream of smokers?
22 A. Yes.
23 Q. All right. And have you done comparisons or
24 reviewed literature comparing the effect of nicotine
25 being delivered to a smoker intravenously versus
26 through smoking?
27 A. Yes.
28 Q. And have you actually observed smoking
29 behavior, smokers smoking and engaging in what's
30 classical smoking behavior?

31 A. Sure. We've all seen that.
32 Q. And you've done that over your 30-plus
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1 career?

2 A. Sure.

3 MR. SCHNEIDER:

4 Your Honor, at this time, the defendants
5 would like to tender Dr. Peter Rowell as an
6 expert in the field of nicotine pharmacology,
7 the effect of nicotine on the body, its
8 relation to smoking behavior and addiction or
9 dependence and the historical knowledge of
10 nicotine and its actions.

11 Take that screen down.

12 And we make Dr. Rowell available for
13 examination.

14 MR. BRUNO:

15 Thank you very much.

16 Good afternoon, everybody, Your Honor.

17 THE COURT:

18 Cross on qualifications, Mr. Bruno?

19 MR. BRUNO:

20 If I may, Judge.

21 CROSS-EXAMINATION BY MR. BRUNO:

22 Q. All right. Doctor, we just met this
23 afternoon, did we not?

24 A. Yes, a few minutes ago.

25 Q. All right. And you have given about 12
26 different depositions in tobacco cases over the --
27 these many years, have you not?

28 A. That's right.

29 Q. All right. And I think that you told this
30 jury that the first work that you did for the
31 cigarette companies was the preparation of this
32 history; is that correct?

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1 A. That's correct.

2 Q. But you didn't tell the jury that when you
3 were contacted to do this work, that the folks who
4 contacted you didn't tell you that they were working
5 for tobacco, did they?

6 A. I don't remember whether they did or not.
7 The first contact was a phone call that came from an
8 environmental place, and I don't remember. It was
9 just the initial phone call.

10 Q. Right. It was a -- you gave the depositions,
11 all 12 of them, which I read, and you said in your
12 deposition that they represented to you that there
13 was some environmental health outfit, and you did
14 not know that they were associated with tobacco when
15 you got the phone call; isn't that true?

16 A. I don't recall knowing that. That's correct.

17 Q. Okay. And when you agreed to do the work,
18 you had some reticence about them even giving you a
19 check; isn't that true?

20 A. Yes.

21 Q. And would you tell the jury why it is that
22 you had some concern about receiving a check from
23 these cigarette companies?

24 A. Because I had not seen any internal tobacco
25 documents. So, I didn't know whether the internal
26 tobacco documents or the work was, in fact, hidden
27 research that nobody knew about, that there was some
28 detrimental information in there. So, I, like
29 everybody else, would have been concerned about
30 something I didn't know and to want to work on
31 something and taking money personally for working
32 for a tobacco company when I didn't know what was in
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1 the documents.
2 Q. Right. So, what you decided to do was have
3 the cigarette company lawyers pay somebody else and
4 then you, of course, were paid for your time, right?
5 A. No.
6 Q. You did it for free?
7 A. No, but the money didn't come to me
8 personally. So, I wasn't paid for my time.
9 Q. Well, did you or did you not get compensated
10 for the time that you spent in doing this work?
11 A. No.
12 Q. Did it for free?
13 A. No. That money --
14 Q. I'm confused.
15 A. Okay.
16 Q. You spent an hour, let's say, you got on the
17 computer and you looked for some stuff, right?
18 A. Right.
19 Q. An hour of your time was expended, right?
20 A. Right.
21 Q. And you got a paycheck while you were doing
22 that work, right?
23 A. No.
24 Q. You didn't get a paycheck?
25 A. No.
26 Q. So, it was for free?
27 A. No. I didn't get a paycheck. I'd like to
28 explain, if I could.
29 Q. You can explain all you want. That's my
30 rule. That's Bruno's rule. But you got to say
31 "Yes" or "No" first.
32 A. No, I did not get a paycheck.

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1 Q. Okay.
2 A. We agreed at the beginning that not knowing
3 what was going to happen with our review, that the
4 money would be paid to the University of Louisville.
5 So, it was not done for free. The law firms paid
6 for the work, but I did not receive a check. That
7 money went to and was written to the University of
8 Louisville and remains today in a research
9 foundation of the University of Louisville. I did
10 not receive money. I mean, I can't buy groceries or
11 anything with that money.
12 Q. Well, you got a paycheck --
13 A. No.
14 Q. -- from the university?
15 A. No. Well, I got the same paycheck I've been
16 getting, which didn't go up any when I did the work.

17 Q. That's fine. Let's be honest and
18 straightforward with the jury.
19 MR. WITTMANN:
20 Objection, Your Honor.
21 EXAMINATION BY MR. BRUNO:
22 Q. You received a check from the university --
23 THE COURT:
24 Wait a minute, Mr. Wittmann. Are you
25 objecting to the last question or this one?
26 MR. WITTMANN:
27 His preface, Your Honor, to this
28 question.
29 THE COURT:
30 That's overruled.
31 Ask your question, Mr. Bruno.
32 EXAMINATION BY MR. BRUNO:
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1 Q. I know you're not trying to mislead the jury.
2 The fact of the matter is that your employer was the
3 university?
4 A. Right.
5 Q. Your employer allowed you to do this work on,
6 shall we say, company time, right?
7 A. No.
8 Q. So, you did it outside of company time?
9 A. Yes.
10 Q. Okay. So, it wasn't reimbursed?
11 A. It wasn't reimbursed to me.
12 Q. To you.
13 A. Right.
14 Q. Okay. That's fine. Finally got that cleared
15 up.
16 Now, you told this jury that this was
17 exceptionally exhaustive work, right?
18 A. Well, I think it was an exhaustive review of
19 the literature. I don't know whether it was
20 exhaustive to me.
21 Q. No. But my point is that you looked
22 everywhere that you could look for articles on the
23 subject of nicotine and the action of nicotine,
24 right?
25 A. Right, in the published literature, right.
26 Q. Would you have -- would you have done the
27 work if these cigarette lawyers had provided you
28 with the articles to look at?
29 A. No, because that wasn't what we did.
30 Q. Right. You wanted to maintain your own
31 integrity and you wanted to do the search for the
32 articles your own self, correct?
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1 A. Correct.
2 Q. So that when you took that witness stand and
3 you took that oath, you could tell the jury I did an
4 exhaustive search. This is the result of my one and
5 a half years of inquiry, right?
6 A. No. Only because the second part of your
7 question, when we did the research, I had no idea
8 that I would ever be called as a witness or have
9 anything to do with a tobacco case when I did that

10 work. So, I didn't do it so that I could get on a
11 witness stand and testify to anything.
12 Q. Okay. Well, the fact of the matter is that
13 this work has been used for a litigation tool since
14 it was completed, right?
15 A. Yes, apparently.
16 Q. Now, you are really an expert when it comes
17 right down to it, on the dopamine release in the
18 brain; isn't that accurate?
19 A. That's one of the things.
20 Q. Okay. And you've done no personal research
21 on this subject of addiction, have you?
22 A. Well, that -- that is very much tied into
23 addiction. So, I would say that is the fundamental
24 biochemical basis which most people ascribe to
25 addiction. But as far as population studies, I
26 mean, I'm not a sociologist. So, I haven't done
27 human research. I'm a basic science laboratory
28 researcher.
29 Q. Your research work has really been confined
30 to animal studies?
31 A. Right, because that's the only place you can
32 do that research.

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1 Q. Very much like Dr. Victor DeNoble which, of
2 course, you know about because you've read the
3 documents and the jury's heard about Dr. DeNoble,
4 right?
5 A. Yes.
6 Q. Now, you're not a psychiatrist, right?
7 A. That's correct.
8 Q. So, you don't diagnose addiction in humans,
9 right?
10 A. No, I don't do that personally, right.
11 Q. And you don't diagnose dependency in humans
12 either?
13 A. That's correct.
14 Q. And I think in your many, many depositions,
15 you told -- the question of you're not an expert in
16 human behavior, right?
17 A. I'm not, as I said, a psychiatrist or a
18 psychologist, although my undergraduate degree is in
19 psychology. I'm an expert, I guess I would say,
20 understanding the human behavior and nicotine
21 connection, not in human behavior in general.
22 Q. To the extent that there's not a drug basis
23 for behavior, are you an expert or are you not?
24 A. I would say not an expert on just behaviors
25 in general.
26 Q. Okay. All right. You talked -- just a
27 moment ago, you talked about the measuring of
28 nicotine -- did you measure the nicotine in the
29 blood of the rats or humans, whatever you were --
30 A. Both.
31 Q. You measured -- did you measure the nicotine
32 in the brain?

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1 A. Yes, I have.
2 Q. Okay.

3 A. Not from humans.
4 Q. Not from humans. Okay. Now, do you
5 appreciate, Doctor, that the purpose of expert
6 testimony is to assist these ladies and gentlemen of
7 the jury in resolving questions of fact?
8 A. Yes.
9 Q. Okay.
10 MR. BRUNO:
11 May we have on the screen PR-02, and the
12 last page, if you don't mind, Carl.
13 If Your Honor please, may I publish this
14 to the jury?
15 THE COURT:
16 No objection, I presume?
17 MR. SCHNEIDER:
18 No objection, Your Honor.
19 THE COURT:
20 You may publish.
21 EXAMINATION BY MR. BRUNO:
22 Q. What I'm showing the jury, Doctor, is the
23 last page of the expert report that you prepared in
24 this case. You recognize it, don't you?
25 A. Yes.
26 Q. Okay. The reason I'm doing this, because I'm
27 personally confused about the expert opinions that
28 you have. And whether they're going to help us
29 resolve some questions in the case.
30 MR. BRUNO:
31 Can we highlight the bullet point, Carl,
32 that starts with the sentence: "Cigarette
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1 smoking is not just a nicotine delivery
2 device"?
3 EXAMINATION BY MR. BRUNO:
4 Q. You see that, Doctor?
5 A. Yes.
6 Q. That first sentence, that sounds vaguely
7 familiar to me. That's something that -- well,
8 actually, it's not something exactly that a
9 cigarette company employee said. It's something
10 like, right?
11 MR. WITTMANN:
12 Your Honor, I object. May I approach
13 the bench?
14 THE COURT:
15 You may approach.
16 (Whereupon, a sidebar conference is held
17 as follows:)
18 MR. WITTMANN:
19 Your Honor, Mr. Bruno continues to make
20 these long diatribes before asking a
21 question, and I object to his making those
22 kinds of statements trying to summarize
23 testimony in that type of question instead of
24 just asking a question. It's improper.
25 MR. SCHNEIDER:
26 I have a second ground for objection.
27 MR. BRUNO:
28 I think it's appropriate to give the
29 jury a context for the question so they'll
30 know what in the heck you're about to ask

31 them. That's all that's intended by that.
32 THE COURT:
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1 Well, you go a little further than that.
2 You say, "it sounds familiar," et cetera.
3 Let me see what you said was. Something the
4 cigarette companies said before. Don't do
5 that anymore.
6 MR. BRUNO:
7 All right.
8 MR. SCHNEIDER:
9 My second round of objection, Your
10 Honor, is this is supposed to be cross on
11 qualifications. He's asking opinions. I
12 haven't even elicited opinions yet. I don't
13 think it's appropriate to go into opinions.
14 MR. BRUNO:
15 That's a good point. It's unusual that
16 I'm doing this. If you look up there, you
17 will see that these are opinions that are not
18 in controversy in this case at all. If you
19 look at the next line, he says cigarette
20 smoking is not addictive. In this case, in
21 opening statement, they admitted it is
22 addictive and their responses to the requests
23 for admissions, they say it is addictive. In
24 their websites, they say it is addictive.
25 I'm trying to figure out what in the heck --
26 because if he's offering opinions on things
27 that are not at issue in the case, he ought
28 not be qualified at the outset, not at the
29 end. He can't be tendered as an expert if
30 what he has to say doesn't help the finders
31 of fact make determinations of fact in this
32 case. That's why I want to make that

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1 inquiry.
2 MR. SCHNEIDER:
3 We're back on the word addiction.
4 MR. BRUNO:
5 That's why I put it up there.
6 THE COURT:
7 Mr. Schneider?
8 MR. SCHNEIDER:
9 I qualified him as an expert in the
10 field of nicotine pharmacology. I have not
11 asked him his opinions yet because Your Honor
12 has not accepted him yet. I will ask him --
13 Mr. Bruno's questions can wait for
14 cross-examination. Qualify him first and
15 then he gives his opinion.
16 THE COURT:
17 I will allow some latitude on cross and
18 qualifications. Cross is wide open. I think
19 that applies to qualifications as well as
20 direct. So, Mr. Wittmann's objection is
21 sustained.
22 Change your form of questioning.
23 The other objection is overruled.

24 MR. BRUNO:
25 Thank you, Judge.
26 (End of sidebar.)
27 EXAMINATION BY MR. BRUNO:
28 Q. Dr. Rowell, the first sentence: "Cigarette
29 smoking is not just a nicotine delivery device"?
30 A. That's my opinion.
31 Q. I understand that, but do you believe that to
32 be an issue in the case? In other words, do you
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1 believe that the plaintiffs in this case are telling
2 this jury that a cigarette is just a nicotine
3 delivery device?
4 A. I don't know. I haven't been involved in --
5 I haven't been in the courtroom. I don't know what
6 the plaintiffs are telling the juries. That's my
7 opinion, that it is not just a nicotine delivery
8 device.
9 Q. I understand that. Even the tobacco company
10 executive who uttered those words did not put the
11 word just in his sentence; isn't that true?
12 A. I don't know what you're talking -- I mean, I
13 don't --
14 Q. You don't know. Well, who told you to
15 comment on that question, then?
16 A. I wrote that myself from my own opinion. I
17 didn't get that from anyplace.
18 Q. You didn't get that from a tobacco company
19 document where a tobacco company executive utters
20 words similar to what's on that line?
21 A. I did not get that from any tobacco company
22 document or executive. I wrote that myself for my
23 own opinion.
24 Q. That's fine.
25 A. And there may have been tobacco company
26 documents that said something similar to that.
27 Q. If I told you that the plaintiffs in this
28 case do not allege that the cigarette smoking is
29 just a nicotine delivery device, then you really
30 can't offer any help to this jury in making that
31 determination, can you?
32 A. No.

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1 Q. If it's not an issue?
2 A. I would agree with you then. You agree with
3 me.
4 Q. We agree. It's not just. It does a whole
5 lot of other stuff, like kill people.
6 MR. LONG:
7 Objection, Your Honor.
8 THE COURT:
9 Sustained.
10 The jury will disregard the testimony by
11 Mr. Bruno.
12 MR. BRUNO:
13 Sorry.
14 EXAMINATION BY MR. BRUNO:
15 Q. Second sentence there, you say it's not
16 appropriate to classify individuals who engage in

17 cigarette smoking as "addicts."
18 A. That's my opinion.
19 Q. That's fine. Do you believe that the learned
20 counsel on this side of the room are alleging in
21 this case that cigarette smokers are addicts?
22 A. I don't know what the plaintiffs are
23 alleging.
24 Q. You don't know. How about this? If I tell
25 you we're not alleging that they're addicts, you
26 have nothing to offer to the jury on that point
27 because it's not an issue, right?
28 A. I don't know. That has been used by many,
29 many people, that cigarette smokers are drug
30 addicts. I don't know whether plaintiffs are
31 alleging that in this case.
32 Q. Would you agree with me when the phrase is
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1 used in the context of cigarette smoking, it's
2 mostly in a humorous context?
3 A. No, I don't think so. I think there are
4 antitobacco advocates that have used the fact that
5 cigarettes are a nicotine-delivery device and
6 really, they're just drug addicts. I've read that
7 many times.
8 Q. Finally, you say that cigarette smoking
9 behavior is not an addiction, right?
10 A. I think it's inappropriate to classify that
11 as an addiction.
12 Q. This is where I'm a little puzzled.
13 A. Okay.
14 Q. The opinions that you're offering to this
15 jury, are they the opinions of the R.J. Reynolds
16 Tobacco Company?
17 A. I don't know.
18 Q. You don't know?
19 A. No. I'm not a -- you know, I'm not here to
20 support or advance or be a spokesman for the tobacco
21 industry, so, I'm here as a independent researcher.
22 Q. Well, okay.
23 A. And that's my opinion.
24 Q. I've got to ask these questions and we'll
25 figure that out in a minute.
26 A. Okay.
27 Q. Brown and Williamson, are your opinions in
28 this courtroom, are they the opinions of the Brown
29 and Williamson Tobacco Company?
30 A. They're my opinions. If the tobacco
31 companies agree with me, fine. If not, too bad. If
32 the plaintiffs agree with me, that's great.
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1 Q. Well, the -- Philip Morris, are your opinions
2 the opinions of the Philip Morris company in this
3 case?
4 A. Well, I don't know what the opinions of the
5 Philip Morris company is exactly. So I, if they --
6 if you have an opinion that they have published and
7 it agrees with this, then, that's -- wonderful.
8 Q. Trust me, we're going to get there.
9 A. Okay.

10 Q. Lorillard. Are your opinions the opinions of
11 the Lorillard company?
12 A. I don't know.
13 Q. You don't know.
14 A. No.
15 Q. Do you know what the issues are in this case?
16 A. My expert opinions are -- I have been asked
17 to come in and talk about how nicotine works in the
18 brain and whether there were internal tobacco
19 documents that would have, had they been published,
20 advanced the information. That's as a nicotine
21 researcher, that's the extent of my expertise.
22 Q. You're not going to tell the jury that
23 cigarette smoking behavior is not addictive?
24 A. I'm going to tell them that's a simplistic
25 and really unhealthful complex to label that as drug
26 addiction. I will have scientific information to
27 support the fact that nicotine is not a drug of
28 tremendous addictive potential.
29 Q. When you were first hired by the cigarette
30 companies back in 1997, the cigarette companies were
31 telling people that they didn't believe that
32 cigarette smoking was addictive; isn't that true?

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1 MR. WITTMANN:
2 Objection. Objection, Your Honor. May
3 we approach?
4 THE COURT:
5 Yes.
6 (Whereupon, a sidebar conference is held
7 as follows:)
8 MR. WITTMANN:
9 Once again, Your Honor, in the guise of
10 asking a question, Mr. Bruno is testifying.
11 I think that's improper examination of the
12 witness. He can ask a question without these
13 long lead-ins of what cigarette companies
14 were saying or not saying at any particular
15 point in time.
16 MR. BRUNO:
17 That was a question. The question was
18 what --
19 MR. WITTMANN:
20 That wasn't the question.
21 THE COURT:
22 It was the question.
23 MR. BRUNO:
24 That was the question.
25 MR. WITTMANN:
26 The other question was --
27 THE COURT:
28 The question was: "When you were first
29 hired by the cigarette companies in 1997, the
30 cigarette companies were telling people that
31 they didn't believe tobacco was addictive;
32 isn't that true?"

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1 MR. WITTMANN:
2 He's stating that that's what the

3 cigarette company -- telling people how he
4 was hired --
5 THE COURT:
6 Anything else, Mr. Schneider?
7 MR. SCHNEIDER:
8 Yes. I would renew my objection.
9 You've given Mr. Bruno some latitude. Now
10 he's asking about what his opinions are,
11 whether they are going to be his opinions.
12 Let's let him give the opinions he gives, not
13 the ones he doesn't give.
14 THE COURT:
15 I'll overrule the objections and we will
16 take our afternoon recess at this point.
17 (End of sidebar.)
18 THE COURT:
19 We will take our afternoon recess at
20 this point, ladies and gentlemen, until 3:00
21 p.m. by the wall clock, please.
22 (Jury excused.)
23 THE COURT:
24 Let the record reflect the jury has been
25 discharged from the courtroom.
26 Anything for the record by plaintiff
27 counsel?
28 MR. BRUNO:
29 No, Your Honor.
30 THE COURT:
31 Defense Counsel?
32 MR. WITTMANN:

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1 No, Your Honor. We will recess until
2 3:00 by the wall clock.
3 (Whereupon, a brief recess is taken.)
4 THE CLERK:
5 All rise for the jury, please.
6 (Jury seated.)
7 THE LAW CLERK:
8 All rise. Recess is over. Court will
9 come to order.
10 THE COURT:
11 Please be seated.
12 One thing on a different subject. I was
13 given to understand that all the jurors were
14 in agreement to changing the work schedule so
15 we would work on May 5th and be off on May
16 9th. Am I wrong? Did you all agree, or is
17 there some disagreement?
18 THE JUROR:
19 No.
20 THE COURT:
21 Everybody agree? Okay. That clears it
22 up. There was a little confusion in my mind.
23 I thought you had agreed, but I thought I'd
24 ask you directly.
25 THE JUROR:
26 That's the right date.
27 THE COURT:
28 Okay. Thank you.
29 THE JUROR:
30 Thank you.

31 THE COURT:
32 Okay. Thank you.
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1 Mr. Bruno.
2 MR. BRUNO:
3 Thank you, Judge.
4 EXAMINATION BY MR. BRUNO:
5 Q. I'm sorry. Do you prefer to be called Doctor
6 or Professor?
7 A. Either one. It doesn't matter. Whatever you
8 prefer.
9 Q. All right. Doctor. When you were first
10 retained by the cigarette companies in 1995, each
11 and every one of these four cigarette companies
12 represented by these lawyers in this courtroom took
13 the public position that cigarette smoking was not
14 addicting; isn't that true?
15 A. I don't know.
16 Q. Well, did they perhaps share with you that in
17 their opening statement to this jury, they said:
18 "We agree cigarette smoking can be considered
19 addictive"?
20 Did they tell you that?
21 A. No, they didn't tell me that.
22 Q. Did -- Brown and Williamson, I guess we'll
23 start with them because those are the lawyers who
24 are cross -- I'm sorry -- directing your testimony,
25 correct?
26 A. It's a law firm. I don't know who -- I'm not
27 sure who they represent.
28 Q. Oh, you don't even know who the lawyers who
29 met with you represent?
30 A. I know the law firm, but sometimes I get
31 mixed up about which law firm is the law firm for
32 Philip Morris or R.J. Reynolds. I believe it is
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1 Brown and Williamson.
2 Q. Okay. Clearly, whatever it is that you're
3 doing for one of these companies is exactly the same
4 for all the other companies, right?
5 A. I guess so, yes.
6 Q. I mean, given that, you know, you don't know
7 which law firm is representing which company,
8 they're always talking to you about the same thing?
9 A. Well, it doesn't matter to my opinion at all.
10 Q. Right. In fact, your opinion has not changed
11 over these, gosh, five and -- eight years?
12 A. I haven't reviewed anything or seen any
13 published science that has made a major change in my
14 opinion.
15 Q. Okay.
16 A. Correct.
17 Q. All right. But the cigarette companies have
18 changed their opinion. Did you know that?
19 A. It's my understanding that their -- some of
20 their websites, their new websites, agree that
21 smoking behavior can be classified as an addiction.
22 Q. All right. Then, you do know that the Brown
23 and Williamson company says on its website Brown and

24 Williamson believes that smokers should rely on the
25 advice of appropriate health authorities, such as
26 the Surgeon General for information on smoking and
27 health, including the conclusions that smoking
28 causes disease and is addictive.

29 You know that?

30 A. I read that this morning, yes.

31 Q. Okay. And likewise, the Philip Morris
32 company, on its website, also says: Cigarette
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1 smoking and addiction, we agree with the
2 overwhelming medical and scientific consensus that
3 cigarette smoking is addictive. You know that, too,
4 right?

5 A. I haven't read that, but it doesn't surprise
6 me.

7 Q. Doesn't surprise you. Okay. And RJR, on
8 their website, they say many people believe that
9 smoking is addictive and as that term is commonly
10 used today, it is -- you knew that, too, right?

11 A. I haven't read that either, but that's --

12 Q. Doesn't surprise you?

13 A. Doesn't surprise me.

14 Q. Finally -- Lorillard doesn't have a website,
15 but are you familiar with requests for admissions
16 where a party gets to ask another party do you admit
17 or deny a fact?

18 A. Actually, I just saw that again this morning.

19 Q. Okay. So, you know that Lorillard, the last
20 of the four companies in this case, they admit that
21 smoking can be addictive. They admit that?

22 A. Well, I didn't see that, but, again, that's
23 not surprising.

24 Q. Okay. So, when the cigarette company lawyers
25 tell the jury that smoking is addictive and you tell
26 the jury that smoking is not addictive, who should
27 they believe?

28 MR. SCHNEIDER:

29 Objection, Your Honor.

30 MR. GAY:

31 Objection.

32 MR. BRUNO:

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1 Withdrawn.

2 A. I had a good answer for that.

3 THE COURT:

4 Withdrawn. I have an objection and I
5 heard Mr. Bruno say I withdraw. You wish to
6 approach on your objection, Mr. Schneider?

7 MR. SCHNEIDER:

8 Your Honor, if he withdraws the
9 question, I guess I can't object.

10 THE COURT:

11 He has withdrawn the question.

12 Next question, please.

13 EXAMINATION BY MR. BRUNO:

14 Q. I'll do a deal. You want to give the answer
15 anyway?

16 THE COURT:

17 Mr. Bruno, if you have a question, ask
18 the question.
19 MR. BRUNO:
20 All right. Sorry. All right.
21 MR. BRUNO:
22 Can we call up PR-02 again? Can we
23 highlight the first sentence of the next
24 bullet? Blow it up, please.
25 EXAMINATION BY MR. BRUNO:
26 Q. Doctor, this refers to another one of the
27 opinions that you told the jury a few moments ago on
28 the tender by your lawyer that you would be offering
29 in the courtroom, right?
30 A. Right.
31 Q. And the first phrase is: There is no
32 evidence? See that?

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1 A. Yes.
2 Q. Now, anybody who would listen to that uttered
3 in this courtroom might believe that you've scoured
4 the planet and that evidence just doesn't exist,
5 right?
6 MR. LONG:
7 Objection, Your Honor.
8 MR. WITTMANN:
9 Objection.
10 A. No, that's not --
11 THE COURT:
12 Just a moment. When you hear the word
13 objection, don't answer the question until I
14 rule on the objection and I will instruct you
15 on whether you should answer or not.
16 THE WITNESS:
17 All right.
18 THE COURT:
19 You wish to approach on your objection?
20 MR. LONG:
21 No. Speculation.
22 THE COURT:
23 Overruled. Answer the question if you
24 can.

25 A. Okay. You said there is no evidence for
26 words --
27 EXAMINATION BY MR. BRUNO:
28 Q. No. No. You said there is no evidence,
29 right? Let's be clear. You wrote that sentence?
30 A. I said there's no evidence that studies
31 conducted by the tobacco industry demonstrated that
32 nicotine is addicting. I have seen no studies
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1 conducted by the tobacco industry that demonstrate
2 that nicotine is addicting, and I have not -- and I
3 have searched and I haven't -- have seen no
4 plaintiffs' witnesses identify any studies that
5 tobacco companies identify are addicting. That's
6 the no evidence.
7 Q. Surely somebody who would listen to you
8 might, might believe that there are no studies in
9 the world. Could they maybe get that inference from

10 that sentence?
11 MR. WITTMANN:
12 Objection, Your Honor.
13 Argumentative.
14 MR. SCHNEIDER:
15 Objection, Your Honor.
16 THE COURT:
17 Sustained.
18 Don't answer that question.
19 Next question.
20 EXAMINATION BY MR. BRUNO:
21 Q. Let's be clear, Doctor. You told this jury
22 that when you were undertaking to find all of the
23 articles on nicotine, you did the search yourself,
24 right?
25 A. Right.
26 Q. When it came to this business of the
27 existence or nonexistence of studies, you relied on
28 the cigarette company lawyers to identify the
29 documents for your review; isn't that true?
30 A. Not entirely, no. I did some searches of
31 literature myself, tobacco company documents.
32 Q. And those were documents where?
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1 A. There's a website, tobacco resolution
2 website, and I searched that website to see if there
3 were documents that I was not seeing that provided
4 some evidence that, well, for all of the things I've
5 talked about. So, I did some studies.
6 Q. Do you know where the documents in the
7 tobacco company websites come from?
8 A. No.
9 Q. No. Okay. Did you ask anybody?
10 A. No.
11 Q. No. Dang. Okay. Well, let's assume that
12 this box -- let's assume, just for the fun of it,
13 that this box -- see, I've got RJR -- Reynolds on
14 one side -- I lost my little holder. It's on my
15 tie. Okay.
16 Let's assume -- see, I've got this box, and
17 I've got Lorillard on one side of the box and I've
18 got Philip Morris on one side of the box and I've
19 got Brown and Williamson on one side of the box and
20 I've got R.J. Reynolds. Okay. Let's assume that
21 this box contains all of the information that these
22 four companies know about with regard to nicotine.
23 Okay?
24 A. (Nods head affirmatively.)
25 Q. Can we do that?
26 A. Yes. That's not a very good assumption,
27 but --
28 Q. It's not?
29 A. Not because -- only because I've seen the
30 boxes, and that box wouldn't begin to hold the
31 number of documents that --
32 Q. Let's assume --
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1 A. We can assume that.
2 Q. Let's assume it's a really big box I've

3 shrunk with my magic machine.
4 A. Okay.
5 Q. Do you understand that when a person files a
6 lawsuit, they get to ask the other side to produce
7 documents? You understand that?
8 MR. WITTMANN:
9 Objection, Your Honor. May we approach?
10 THE COURT:
11 Yes.
12 (Whereupon, a sidebar conference is held
13 as follows:)
14 MR. WITTMANN:
15 Your Honor, these questions don't go to
16 this witness' expert qualifications. He's
17 asking us to assume things. He's getting
18 into substantive questioning. I don't know
19 what he's doing. It's not qualifications.
20 MR. BRUNO:
21 This is methodology. I will demonstrate
22 this witness' methodology -- once again, look
23 again, he says "no evidence in the world."
24 His methodology was he let the defendants
25 give him the documents.
26 THE COURT:
27 I will give you some latitude.
28 The objection at this point is
29 overruled.
30 Try to keep your questions limited to
31 that.
32 MR. SCHNEIDER:

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1 He's attacking methodology a la Daubert.
2 That should be done at another time.
3 THE COURT:
4 If this becomes a Daubert hearing, I'll
5 stop it.
6 (End of sidebar.)
7 EXAMINATION BY MR. BRUNO:
8 Q. You know, let me back up a little bit. You
9 made the comparison between all of the articles in
10 the world on nicotine and you compared that to some
11 documents that the defense lawyers had you look at,
12 right?
13 A. Yes.
14 Q. Now, I just want to make sure that the jury
15 and we all understand where the documents came from.
16 The plaintiff, when he files a lawsuit, can ask the
17 defendant to produce documents. You understand
18 that?
19 A. Yes.
20 Q. And the defendant, their lawyers can object
21 or they can produce documents and if there's an
22 objection, the Judge will rule, sometimes the
23 document's produced and sometimes they're not. You
24 know that?
25 A. I guess that's right.
26 Q. Let's assume that these are the documents
27 that got produced. Now, those are the documents
28 that the plaintiff lawyers have access to, right?
29 A. I assume so, yes.
30 Q. These are the documents that are also on

31 those websites, right?
32 A. I don't know where the documents on the
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1 website came from. There may be more on there or
2 less. I don't know.

3 Q. Would you take my word for it the documents
4 on the website are documents produced in the
5 litigation.

6 A. I'll take your word for it.

7 Q. Now, did you ask any of the defendant
8 cigarette companies to let you go to their offices
9 and look at the documents that they didn't produce?

10 A. I made --

11 MR. LONG:

12 Objection, Your Honor. May I approach?

13 THE COURT:

14 Yes.

15 (Whereupon, a sidebar conference is held
16 as follows:)

17 MR. LONG:

18 Mr. Bruno, his questions seem to try to
19 create the impression that there are
20 documents that our clients have, the law
21 firms have, that haven't been produced in
22 litigation. The witness doesn't know that.
23 It's not fair to ask him to assume that.
24 Every document requested in this case was
25 produced. If we objected to it, we had a
26 hearing or not. There's no evidence that
27 there's any documents relating to nicotine
28 that haven't been produced.

29 MR. BRUNO:

30 That's not the question.

31 THE COURT:

32 The question was did you go to the
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1 tobacco companies and ask them to let you
2 look at the documents they didn't produce.

3 MR. BRUNO:

4 Right.

5 THE COURT:

6 It presumes as a fact that there are
7 some documents they didn't produce, and I
8 think that's Mr. Long's contention. That's
9 not in evidence.

10 MR. BRUNO:

11 If he's suggesting that I meant broke
12 the law and didn't produce, I meant there
13 could be many documents that were not the
14 subject of an appropriate discovery request.

15 THE COURT:

16 His statement was that whatever was
17 requested to be produced, it was produced or
18 it was ruled they didn't have to produce it.
19 The implication in your question is that
20 there's some that they didn't produce, and
21 that's inappropriate.

22 MR. BRUNO:

23 There may be some documents they didn't

24 produce. How do we know?
25 THE COURT:
26 You're asking him to assume that as a
27 fact. That's not in evidence.
28 MR. BRUNO:
29 I'll withdraw the question and change
30 it.
31 MR. LONG:
32 The inference is there are documents
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1 relative to the issue of nicotine that the
2 companies didn't produce. There is
3 absolutely no evidence of that and it creates
4 a false impression.
5 MR. BRUNO:
6 The burden is on this witness to --
7 MR. LONG:
8 How does he know that?
9 MR. BRUNO:
10 As an expert witness, he has to conduct
11 the inquiry.
12 THE COURT:
13 The inference of your question is
14 inappropriate.
15 MR. BRUNO:
16 I will withdraw the objection and change
17 it.
18 THE COURT:
19 I will maintain the objection and
20 instruct the jury to disregard the question.
21 (End of sidebar.)
22 THE COURT:
23 The objection is sustained.
24 Disregard that question.
25 Next question.
26 EXAMINATION BY MR. BRUNO:
27 Q. Did you go to the cigarette companies and did
28 you ask to see their documents?
29 A. Well, I've never conducted business directly
30 with the cigarette companies, first of all, with the
31 firms that represent them, but in the few cases, I
32 did read in company documents that I was provided
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1 some references to documents that I didn't remember
2 seeing, and I asked for those to be provided.
3 Q. We made a deal, Doc. The deal was you would
4 answer my question, and if you wanted to explain,
5 you could. I will ask you one more time. Did you
6 go to the cigarette companies and ask them if you
7 could see their documents?
8 MR. SCHNEIDER:
9 Objection.
10 A. No.
11 MR. SCHNEIDER:
12 Asked and answered, Your Honor.
13 MR. BRUNO:
14 Well, now, I've got an answer, so --
15 THE COURT:
16 Well, the objection is moot because he

17 answered your question.
18 EXAMINATION BY MR. BRUNO:
19 Q. Did you ask the cigarette companies if you
20 could go talk to their scientists about what they
21 knew or didn't know about nicotine?
22 A. No, I have not talked to the cigarette
23 companies.
24 Q. At all?
25 A. No.
26 Q. Did you ask the lawyers to ask the companies?
27 A. If I could talk to their scientists?
28 Q. Yeah.
29 A. No, because I've talked to their scientists
30 at scientific meetings before, but I did not ask the
31 defense if I could talk to their scientists.
32 Q. Did you believe it would be an appropriate
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1 scientific inquiry to go and learn whether or not
2 there was information that might exist that wasn't
3 produced in litigation that you might want to
4 evaluate in order to make the statement that you
5 make in your report?
6 MR. LONG:
7 Same objection, Your Honor.
8 THE COURT:
9 Overruled.
10 Answer the question if you're able to.
11 A. Okay. I do not believe that I have any
12 better ability to rummage around through the tobacco
13 company documents than the plaintiffs' lawyers. So,
14 I did not think it was -- I would be able to uncover
15 new information if it was available, and if it was
16 able to be produced by myself. So, I have not asked
17 to do that.

18 EXAMINATION BY MR. BRUNO:
19 Q. That's fair, Doctor, but wouldn't it be more
20 appropriate then to tell the jury after reviewing
21 the documents that the defense lawyers picked out of
22 what the plaintiff lawyers looked at after getting
23 discovery, I made these conclusions? Wouldn't that
24 be a more fair thing to tell the jury?

25 MR. SCHNEIDER:
26 Objection, Your Honor.
27 May we approach?
28 THE COURT:
29 Yes.
30 (Whereupon, a sidebar conference is held
31 as follows:)

32 THE COURT:
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1 Mr. Schneider?
2 MR. SCHNEIDER:
3 Yes. My objection is the question is
4 contrary to the record. It's exactly what
5 the witness did tell the jury, that he
6 reviewed documents that were selected by the
7 plaintiffs, and to make that question as if
8 he said something different is objectionable.
9 MR. BRUNO:

10 Except I was referring to the report
11 sentence, Mr. Schneider. I wasn't referring
12 to what he told -- asked him on direct.
13 MR. SCHNEIDER:
14 That report was never given to the jury
15 by him at any time. You put it up.
16 MR. BRUNO:
17 I know. So, I'm still asking the
18 question about the report. Is it wrong?
19 THE COURT:
20 The objection is overruled.
21 (End of sidebar.)
22 THE COURT:
23 The objection is overruled.
24 Answer the question if you're able to.
25 Do you remember the question or you want
26 it read back?
27 THE WITNESS:
28 Would you read it back, please?
29 THE COURT:
30 Wouldn't it be more appropriate then to
31 tell the jury after reviewing the documents
32 that the defense lawyers picked out of what
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1 the plaintiffs' lawyers looked at after
2 getting discovery I made these conclusions?
3 Wouldn't that be a more fair thing to tell
4 the jury?
5 A. That would be a better representation of what
6 that statement should have said. I should probably
7 have better stated there is no evidence that I'm
8 aware of or that I have seen that studies conducted
9 by the tobacco industry demonstrate that nicotine is
10 addictive.
11 EXAMINATION BY MR. BRUNO:
12 Q. Thank you very much, Doctor. I just have a
13 few more questions.
14 Do you understand that the plaintiff lawyers
15 in this case had any opportunity to, quote, rummage
16 through the defendants' documents?
17 A. I don't know how they are able to obtain the
18 documents.
19 Q. All right. That's fine. Now, you've already
20 testified, I believe, that a good part of your work
21 was funded by something called the Tobacco -- I'm
22 sorry -- the Kentucky Tobacco Health and Research --
23 say it to me again. They've changed their name.
24 I'm getting confused. What's the old name?
25 A. The name that I know it under is Kentucky
26 Tobacco and Health Research Institute.
27 Q. They've changed their name, haven't they?
28 A. I wasn't aware of that.
29 Q. I went on the website last night. It's
30 Kentucky Tobacco Research and Development Center
31 now. That surprise you that they changed their
32 name?
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1 A. No, it's not.
2 Q. This is also funded by the dedicated tax on

3 cigarettes in Kentucky?

4 A. Yes.

5 Q. I was curious if you understand that this is
6 the mission of that entity, old name or new name?
7 It says here:

8 "The Kentucky Tobacco Research and
9 Development Center conducts and supports
10 unique research programs that examine new
11 agricultural crop opportunities based upon
12 tobacco and other plants."

13 It says: "The center's research
14 projects explore the development and use of
15 tobacco as a production system for plant-made
16 pharmaceuticals and the discovery of new
17 plant natural products having potential for
18 commercialization. The Kentucky Tobacco
19 Research and Development Center program
20 emphasizes applications oriented research
21 design to facilitate the development of new
22 crop-based businesses and technologies for
23 Kentucky agriculture."

24 Would you agree that that's the mission
25 of these entities that funded most of your work?

26 MR. WITTMANN:

27 Objection, Your Honor. Hearsay. May I
28 approach?

29 THE COURT:

30 Yeah.

31 (Whereupon, a sidebar conference is held
32 as follows:)

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1 MR. WITTMANN:

2 Again, Your Honor, I don't think that
3 Mr. Bruno can just get up and start reading
4 from a hearsay document not in evidence in
5 the form of a question. I think that's
6 improper examination.

7 MR. BRUNO:

8 He gets to tell me no if he doesn't get
9 it or doesn't understand it or that I'm
10 saying something incorrect.

11 MR. WITTMANN:

12 I don't think you get to read from a
13 document at all unless you establish that the
14 witness knows it's there. Reading from a
15 document --

16 MR. BRUNO:

17 I can't possibly memorize the mission
18 statement of this entity.

19 MR. WITTMANN:

20 I don't care if you memorize it or not.
21 You couldn't state it if you didn't have the
22 document.

23 MR. BRUNO:

24 Yes, I could. I could say, is the
25 mission statement of X Y?

26 MR. WITTMANN:

27 That isn't what you did. You started
28 reading from it to give it evidentiary
29 weight.

30 MR. BRUNO:

31 So, I take it and write it down on
32 another sheet of paper?
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1 MR. WITTMANN:
2 Right.
3 THE COURT:
4 The objection is sustained.
5 I'm going to instruct him not to answer
6 the question.
7 (End of sidebar.)
8 THE COURT:
9 Objection sustained.
10 Next question, please.

11 EXAMINATION BY MR. BRUNO:

12 Q. Doctor, can you tell the jury what the
13 mission is of the entity that funded most of your
14 research?

15 A. The mission of the Kentucky Tobacco and
16 Health Research Institute was to study the effects
17 of tobacco and nicotine and different
18 pharmacological and other effects. They have in the
19 last three or four years, as the name implies -- I
20 wasn't exactly sure they had changed their name, but
21 I knew they had changed their mission, they had
22 shifted their emphasis now to try to find
23 alternative for the farmers of Kentucky for rather
24 than producing tobacco for cigarette manufacture to
25 use the tobacco plant for pharmaceutical purposes,
26 for genetic manipulation. That is reflected in the
27 new mission statement, which was not the mission
28 when I was applying for funding.

29 Q. Right.

30 A. They do not support neuropharmacological
31 research anymore because the new mission, as you
32 said, is really more of a development process. So,
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1 the mission is not -- that you read is not the
2 mission that it was when I was being funded.

3 Q. So, when you were being funded, the mission
4 was to study tobacco and health?

5 A. It was to study the pharmacological basis of
6 tobacco and health, basically, and other aspects.
7 They didn't study -- they didn't do anything with
8 cancer research or anything like that. It was other
9 aspects of tobacco.

10 Q. To what end?

11 A. To discover more -- I think the end result
12 was to try to determine what were the harmful
13 effects of tobacco and what were the good effects of
14 tobacco. I mean, the whole thing was to try to
15 support Kentucky tobacco, which is a major crop in
16 Kentucky, and that was the end, to try to find
17 research that would help the tobacco farmers. And
18 the new mission that you read is to try to do that
19 in a little bit different way.

20 Q. Right. You're there, Doc. The bottom line
21 is the fact the mission of this entity was to help
22 the tobacco farmers, right?

23 A. To protect these little, you know, family

24 farms that grow tobacco, right.
25 Q. If you weren't making cigarettes, there would
26 be no need to grow tobacco, right?
27 A. Well, that's the new mission, is to try to
28 find ways to continue the tobacco crop -- because it
29 is kind of a unique plant and it does have the
30 ability to -- you can genetically manipulate tobacco
31 to make pharmaceutical products. That's the new
32 emphasis.

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1 Q. Do you think an entity that's devoted to
2 protecting the tobacco farmer and his way of life
3 would be terribly interested in doing research that
4 might show that cigarette smoking is something
5 really, really, really bad for you?

6 A. Yes. I think any knowledge that came out of
7 that research could be useful for, perhaps, making
8 people who are going to continue to smoke less
9 susceptible to the health hazards of cigarette
10 smoking.

11 MR. BRUNO:

12 Thank you so much, Doctor, for allowing
13 me to cross-examine you on your
14 qualifications. I really appreciate it.

15 THE COURT:

16 Redirect on qualifications?

17 MR. SCHNEIDER:

18 Yes.

19 RE-DIRECT EXAMINATION BY MR. SCHNEIDER:

20 Q. Dr. Rowell, Mr. Bruno was questioning you on
21 your various opinions. Have you given any opinions
22 to the jury yet?

23 A. I don't believe so, not really, no. Talked
24 about what I'm going to talk about.

25 Q. All right. You talked about first being
26 retained as an expert consultant, and you eventually
27 learned that the lawyers that were retaining you
28 were working for tobacco defendants, correct?

29 A. That's correct.

30 Q. Did that knowledge in any way affect the work
31 that you did?

32 A. Not at all.

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1 Q. Did it affect in any way the completeness of
2 your literature search?

3 A. No.

4 Q. Now, Dr. Rowell, are you here to tell the
5 jury that it is inappropriate to call cigarette
6 smoking an addiction?

7 A. My opinion as a pharmacologist is that that
8 is inappropriate because I think of an addiction as
9 what substance or drug is the person addicted to, as
10 a drug addiction.

11 Q. But if the definition of addiction is the
12 addiction -- the definition that the United States
13 Surgeon General adopted in 1988, and the cigarette
14 companies have adopted that definition, are you here
15 to disagree with that statement?

16 A. In part, I am, because the Surgeon General's

17 1988 report classified cigarette smoking addiction
18 as compulsive drug use and not compulsive cigarette
19 smoking behavior. Had they done that, I would have
20 no objection to it, but I do not agree that
21 cigarette smoking is a drug addiction.
22 Q. All right. With respect to cigarette smoking
23 behavior, the behavior of smoking, you think that
24 can be labeled under some definitions as an
25 addiction?
26 A. Sure, under commonly used definitions, people
27 talk about cigarette smoking addictions, and I don't
28 have a quibble with that.
29 Q. Today in giving your opinion, Doctor, are you
30 going to focus on comparing nicotine and the effects
31 of nicotine to the effects of other drugs, like
32 cocaine and heroin?

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1 A. Yes. That would be a fundamental part of my
2 testimony.
3 Q. And is that a topic that you have studied for
4 30 years?
5 A. Yes.
6 Q. Is that a topic upon which you have written
7 peer-reviewed articles during the course of your
8 career?
9 A. Yes.
10 Q. With respect to the funding of your research
11 by the Kentucky Tobacco and Health Institute, did
12 you submit to them proposals for research on the
13 pharmacology of nicotine?
14 A. Yes.
15 Q. And were those proposals funded by that
16 institution?
17 A. Yes, they were.

18 MR. SCHNEIDER:
19 Thank you, Doctor. I would submit him
20 on his qualifications, Your Honor.
21 THE COURT:
22 Objections to the tender?
23 MR. BRUNO:
24 May I have a moment, Judge, please?
25 Judge, I will confess to you that this
26 is a new one. I've never been in a trial
27 where an expert was tendered to contradict --
28 THE COURT:
29 Approach the bench, please.
30 MR. WITTMANN:
31 Your Honor --
32 THE COURT:

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1 Approach the bench, please.
2 (Whereupon, a sidebar conference is held
3 as follows:)
4 MR. BRUNO:
5 Should I give my objection at sidebar?
6 THE COURT:
7 No.
8 MR. WITTMANN:
9 Mr. Bruno cannot resist making

10 statements that he shouldn't be making in
11 front of the jury despite your repeatedly
12 telling him not to.
13 THE COURT:
14 I asked if he had any objections. He
15 talked to Mr. Herman and he started, I guess,
16 making an objection. I think it's
17 appropriate that I hear the objections and
18 the arguments outside of the hearing of the
19 jury. We will do that right now.
20 I will dismiss the jury for the day and
21 hear the objections and I'll rule.
22 MR. BRUNO:
23 Thank you, Judge.
24 (End of sidebar.)
25 THE COURT:
26 The arguments on whether or not this
27 gentleman should be qualified as an expert
28 are going to take place out of your presence.
29 It's not necessary that you hear it. We will
30 recess for today, until tomorrow morning, and
31 let's be on time tomorrow, everybody. Thank
32 you. Both at 9:30 and at 1:30.

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1 (Jury excused.)
2 MR. BRUNO:
3 Judge, before I make my argument, may I
4 put some -- I'd like to put some things in
5 evidence in connection with --
6 THE COURT:
7 If you'll allow me to get things on the
8 record since the jury has left, then, we'll
9 do some other things.
10 The jury has left the courtroom.
11 Anything for the record by plaintiffs'
12 counsel other than having to do with the
13 tender of Dr. Rowell as an expert?
14 MR. RUSS HERMAN:
15 I heard the last --
16 MR. BRUNO:
17 Other than --
18 MR. RUSS HERMAN:
19 We had one other issue, but I could wait
20 for that.
21 THE COURT:
22 Defense Counsel anything for the record?
23 MR. WITTMANN:
24 Yes, Your Honor. Mr. Bruno repeatedly
25 says things in front of this jury that he
26 shouldn't be saying and he knows he shouldn't
27 be making them. "In all of my years of an
28 attorney" -- an objection was made -- that's
29 not proper conduct in view of Your Honor's
30 orders and we would request Your Honor again
31 on the record to instruct Mr. Bruno not to do
32 that again.

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1 MR. RUSS HERMAN:
2 Your Honor, can we ask the witness to be

3 excused?
4 THE COURT:
5 You are admonished to that effect, Mr.
6 Bruno.
7 MR. BRUNO:
8 Yes, Your Honor.
9 THE COURT:
10 Please step out of the courtroom.
11 THE WITNESS:
12 Certainly.
13 (Witness excused.)
14 THE COURT:
15 Objections to the tender, Mr. Bruno.
16 Mr. Bruno, if you wish to object to the
17 tender, it's time to do so.
18 MR. BRUNO:
19 Yes. Judge, in connection with our
20 opposition, I'd like to offer and introduced
21 the following documents into the record. The
22 first, Judge, is Page -- Transcript Page
23 1,366 of this record, which contains the
24 sentence uttered by Mr. Long: "We agree
25 cigarette smoking can be considered
26 addictive."
27 Second thing I'd like to offer into
28 evidence is the Scott Plaintiffs' Exhibit
29 Number 1882.01, which is the Brown and
30 Williamson company website wherein they make
31 the statement: "Brown and Williamson agrees
32 that by current definitions of the term

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1 addiction, including that of the Surgeon
2 General in 1988, cigarette smoking is
3 addictive."
4 Also offer response of Brown and
5 Williamson to Plaintiffs' First Request for
6 Admissions Regarding Merits Directed to All
7 Defendants. It is Scott Plaintiffs' Exhibit
8 Number 1961.01, specifically, Judge, at
9 Request Number 23, which is admitted, deny
10 cigarette smoking is addictive?
11 Answer: "Brown and Williamson
12 recognizes that by most current definitions
13 of the term addiction, including that of the
14 Surgeon General in 1988, cigarette smoking
15 can be classified as addictive. We agree
16 that cigarette smoking is addictive in the
17 sense that the term is applied in common,
18 everyday usage."
19 Also introduce Philip Morris website
20 Plaintiffs' Exhibit Number 3115.02, wherein
21 it is stated: "We agree with the
22 overwhelming medical and scientific consensus
23 that cigarette smoking is addictive."
24 Also Philip Morris's Response to
25 Plaintiffs' First Request for Admissions
26 Regarding Merits Directed to All Defendants.
27 It is Exhibit Number 806.01, specifically,
28 Number 27, admit or deny that cigarette
29 smoking is addictive. Response, Philip
30 Morris admits this request.

31 Also RJR website Exhibit Number 4741.01,
32 wherein R.J. Reynolds make the statement:
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1 "Many people believe that smoking is
2 addictive and as that term is commonly used
3 today, it is."

4 Also the R.J. Reynolds company
5 response -- I'm sorry -- response of R.J.
6 Reynolds Tobacco Company to Plaintiffs' First
7 Request for Admissions Regarding Merits
8 Directed to All Defendants. It is Scott
9 Exhibit 4780.01, Request Number 23, admit or
10 deny cigarette smoking is addictive.
11 Reynolds states that many people believe that
12 cigarette smoking is addictive and as that
13 term is commonly used today, i.e., to
14 describe behavior that is difficult to quit,
15 close paren, it is.

16 Finally, Scott Exhibit Number 2871.02,
17 which is the Lorillard Tobacco Company's
18 Response to Plaintiffs' First Request for
19 Admissions Regarding Merits Directed to All
20 Defendants at Request Number 23:

21 "Admit or deny that cigarette smoking is
22 addictive."

23 Response: "Lorillard, however, believes
24 that smokers can reach a decision to stop
25 smoking subject to and without waiving the
26 general objections stated above, Lorillard
27 admits that cigarette smoking can be
28 addictive."

29 Now, Judge, it's -- despite learned
30 Counsel's attempt to elicit from the witness
31 in the last few moments before the jury was
32 discharged an opinion that he was not going

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1 to disagree with the '88 Surgeon General's
2 Report, the witness said that he did. The
3 fact of the matter is that under 401, 402,
4 403, there is a discussion of relevant
5 evidence. In this case, the defendants,
6 through their websites, which affirmatively
7 state their position on addiction, through
8 their response to requests for admissions,
9 have stated that they agree that cigarette
10 smoking is addictive. Judge, once they
11 respond to a request for admission on that
12 point, that issue is out of the case. It's
13 gone. 402 says -- 401 says:

14 "Relevant evidence means evidence having
15 any tendency to make the existence of any
16 fact that is of consequence to the
17 determination of the action more probable or
18 less probable than it would be without the
19 evidence."

20 Now, in this case, to the extent that
21 the jury is going to be asked that question,
22 the defendants have admitted it, that there's
23 nothing whatsoever that this witness'

24 testimony on the subject of addiction can add
25 to the resolution of that issue either way.
26 402 says to the extent it is not
27 relevant, it is not admissible. It doesn't
28 come in.

29 We respectfully suggest, Judge, that any
30 testimony by this witness that would suggest
31 in any way that cigarette smoking is not
32 addictive is not an opinion that he should be

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1 permitted to make under 401 and 402 of the
2 Code of Evidence.

3 With regard to his opinion relative to
4 his comparison between what's known in the
5 world about nicotine and its properties
6 versus what the cigarette companies know, it
7 has been demonstrated without question that
8 he did not appropriately make the necessary
9 scientific inquiry to reach that conclusion.
10 He admits that he relied on the defense
11 lawyers to select the documents for his
12 review. He admitted, when I asked him the
13 same question with regard to his efforts to
14 uncover all of the articles in the world
15 about addiction, that he would not have
16 accepted that same assistance from defense
17 counsel because it wouldn't have been a
18 legitimate scientific inquiry.

19 As such, any opinion that he has about
20 what the cigarette companies knew relative to
21 what was extant in the published world about
22 nicotine addiction should be excluded on that
23 basis.

24 Finally, the witness has testified that
25 he is -- all of the body of his knowledge is
26 based upon animal studies and, as such, all
27 of his opinions should be limited to the
28 effect of nicotine on animals. He admits
29 that he has done no studies on human beings.
30 The best thing that he could tell this jury
31 in the tender was that he had read articles
32 by others on that subject and was prepared to

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1 give an opinion based upon his review of
2 those articles.

3 With that, Judge, we respectfully
4 suggest that this witness' tender and his
5 examination should be so limited.

6 THE COURT:

7 You object to his tender as an expert in
8 nicotine pharmacology?

9 MR. BRUNO:

10 Only as it relates to animals. I'm
11 sorry. We agree he is an expert in nicotine
12 pharmacology as it relates to animals, not
13 humans.

14 THE COURT:

15 You object to his tender as an expert
16 with regard to the effects of nicotine on the

17 body?
18 MR. BRUNO:
19 Yes. The human body.
20 THE COURT:
21 Do you object to his tender as an expert
22 with regard to nicotine's relation to smoking
23 behavior and addiction or dependence?
24 MR. BRUNO:
25 We object to the -- he testified, Judge,
26 I believe, that he is not an expert on
27 smoking behavior, that is, the behavior of
28 individuals who smoke in the absence of the
29 pharmacological component.

30 THE COURT:
31 He was tendered as an expert in the
32 field of nicotine pharmacology, the effect of
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1 nicotine on the body, its relation to smoking
2 behavior and addiction or dependence.

3 MR. BRUNO:
4 We believe he's demonstrated quite
5 clearly that he has nothing to offer on the
6 issue of addiction and, therefore, we object
7 to his tender on that subject.

8 THE COURT:
9 And the last area in which he was
10 tendered as an expert is historical knowledge
11 of nicotine and its actions.

12 Do you object to his tender as an expert
13 in that field?

14 MR. BRUNO:
15 We don't object, Judge, that he has done
16 this historical review of nicotine and its
17 actions. Our problem is his attempt to
18 compare that to what cigarette companies
19 knew. So, this is not an objection to the
20 tender. Rather, it's a motion to limit his
21 testimony that he should be prohibited from
22 making any comment whatsoever on what the
23 cigarette companies knew.

24 THE COURT:
25 Well, the historical knowledge possessor
26 is not identified in the tender. It's not a
27 tender of -- expert in the historical
28 knowledge of --

29 MR. BRUNO:
30 You are right.

31 THE COURT:
32 -- certain parties or excluding certain
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1 parties. It's general. That's my question
2 to you. Do you object to that tender?

3 MR. BRUNO:
4 Yes, I do, precisely because, you remind
5 me, it is far more inclusive than one would
6 believe.

7 THE COURT:
8 Response?

9 MR. SCHNEIDER:

10 Yes, Your Honor. Just a couple of
11 housekeeping matters first. The plaintiffs
12 cited to the opening statement as remarks as
13 evidence. They're not evidence. But the
14 defendants in this case are not going to
15 contest that you can call cigarette smoking
16 addiction by the commonly used definition
17 and, in fact, our websites say that and our
18 requests for admissions say that. Dr.
19 Rowell, I'm not going to elicit an opinion
20 from him that cigarette smoking is not
21 addictive. Instead, he is going to talk
22 about nicotine pharmacology and compare the
23 strength of nicotine, how nicotine acts in
24 the body versus cocaine, heroin and other
25 things. That's the things that he studied
26 his entire career.

27 They say that his studies are based on
28 animal research. In major part, it is.
29 That's animal research cited by the Surgeon
30 General in a report that concluded that
31 nicotine was addictive in 1988. If it's good
32 enough for the Surgeon General, it's good

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1 enough for this jury and, in fact, the
2 witness will testify that pharmacologists
3 routinely rely on the results of animal
4 studies because you can't put probes in the
5 brains of human beings to measure dopamine
6 levels. You have to draw inferences from
7 animals. That's part of the opinions he will
8 elicit.

9 Your Honor, he has not yet given his
10 opinions to the jury. The plaintiffs have
11 criticized his personal view on addiction,
12 but I'm intending to elicit his testimony on
13 three areas: Comparing how nicotine affects
14 the body, how it works on nerves; talk about
15 the effect, to compare that to other drugs,
16 like cocaine, caffeine, morphine,
17 amphetamine; and to compare the relative
18 impact of nicotine being intravenously
19 delivered to a person versus smoking behavior
20 based on literature that he has reviewed as
21 somebody who's worked as a pharmacologist for
22 30 years and been funded by state agencies
23 and by the federal government.

24 With respect to the historical knowledge
25 of nicotine and its addiction, I mean the
26 scientific historical knowledge of nicotine
27 and its actions that's been published. With
28 respect to the tobacco documents, the opinion
29 to be elicited from Dr. Rowell is whether
30 documents that the plaintiffs have pointed to
31 as containing new scientific information, in
32 fact, contain new scientific information, in

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1 his opinion, based on the research that he
2 has done.

3 Now, he has his own personal views about
4 what should and should not be called
5 addictive, and he is a scientist and
6 respected scientist in that field. We're not
7 going to elicit his opinions on whether we
8 agree or disagree with his opinions on
9 addiction. We are going to talk about the
10 strength of nicotine and its role with
11 respect to dependence, how -- whether
12 nicotine interferes with a person's ability
13 to quit. The plaintiffs themselves have
14 called witnesses, Dr. Henningfield and Dr.
15 Benowitz, who have talked about nicotine
16 pharmacology. These witnesses have said that
17 nicotine is like cocaine and heroin. These
18 witnesses have said that nicotine has an
19 effect on neurotransmitters. Well, this
20 witness is going to address those fields.
21 He's going to compare the relative
22 contribution of nicotine versus other drugs
23 and their effect on the body and his ultimate
24 opinion is going to be that its
25 pharmacological effects are far weaker than
26 the effects noted for other drugs.
27 Plaintiffs will try to compare it to cocaine
28 and heroin, but we don't think it compares in
29 that fashion.

30 He has -- this is a witness who has
31 worked in the field for 30 years in nicotine
32 pharmacology. He's published 30 peer-

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1 reviewed articles, he has been cited by the
2 U.S. Surgeon General and he is well qualified
3 to talk about nicotine pharmacology and the
4 results of animal studies.

5 The plaintiffs disagree with his view on
6 what you can call addiction is totally beside
7 the point and that's not an opinion we're
8 going to elicit from him. We're not going to
9 tell him, give us your personal opinions on
10 what you should and should not call
11 addictions.

12 For those reasons, Your Honor, we think
13 he should be accepted as an expert in the
14 field of nicotine pharmacology, he should be
15 allowed to testify about the effect of
16 nicotine on the body based on the research he
17 has done and the animal research he has done.
18 He should be allowed to talk about nicotine
19 pharmacology and how that relates to smoking
20 behavior and how it relates to addiction and
21 dependence. He will testify that when you
22 compare nicotine, cocaine, heroin, cocaine
23 and heroin have far more of an addiction and
24 dependence propensity than does nicotine.

25 With regard to the historical knowledge,
26 Mr. Bruno admits he has surveyed the
27 literature. That's what we were talking
28 about there. When were certain findings made
29 with respect to nicotine and the literature?
30 With respect to tobacco documents, the sole

31 opinion I intend to elicit from him is to say
32 has he been given documents that he
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1 understands that plaintiffs in tobacco
2 litigation contend show new tobacco -- new
3 nicotine findings and do they, in fact, when
4 you compare them to the historical
5 literature, show a new finding.

6 So, Your Honor, for that reason, we
7 would submit that he should be accepted.
8 We're not -- again, we're not going to elicit
9 his opinion on the ultimate issue of whether
10 or not we can call cigarette smoking behavior
11 and nicotine addictive.

12 THE COURT:

13 You wish to respond briefly, Mr. Bruno?

14 MR. BRUNO:

15 Very briefly. First, Judge,
16 housekeeping. I'd like to also move for
17 introduction the expert report of Peter
18 Rowell, which, Judge, as you must know, is
19 the only thing that guides us with regard to
20 what this gentleman is going to talk about.

21 Secondly, in response to the opening
22 statement, we don't offer it as a piece of
23 evidence. We offer it as an admission of
24 fact which Counsel made in opening statement,
25 the same as the response to the request for
26 admissions.

27 Finally, the biggest problem we have
28 here, this is another example of the
29 cigarette companies' creating an issue,
30 providing expert testimony when none exists.
31 This business of the comparison between
32 cocaine and the other drugs is a comparison

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1 relative to the difficulty that one has in
2 quitting those drugs. This guy's -- I'm
3 sorry -- this gentleman's opinion has been
4 manufactured to talk about something that's
5 not even in the case. This business of
6 whether it's weak or rewarding as compared to
7 other drugs is of absolutely no moment to
8 this case. This jury is not going to be
9 asked which is the more dependence producing,
10 heroin or cigarette smoking. That's not in
11 this case at all. That's a red herring. But
12 the only opinion, if Your Honor reviews this
13 report, that this witness can possibly
14 testify to that's at all relevant to the case
15 is that nicotine produces a rather mild
16 degree of physical dependence. Everything
17 else is not in this case.

18 I would invite Your Honor to review his
19 report and conclusions in connection with our
20 arguments. This doesn't have a number. I'll
21 just give this -- it's been referred to --
22 for purposes of the record, let's introduce
23 this as PO Number 2.

24 THE COURT:
25 Mr. Schneider, you wish to say
26 something?
27 MR. SCHNEIDER:
28 Yes, briefly, Your Honor. I'm sure that
29 Your Honor recalls that Dr. Henningfield and
30 Dr. Benowitz talked about the effect of
31 nicotine on the brain, talked about the
32 neurotransmitters that nicotine triggers,
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1 talked about how nicotine operates like
2 cocaine and like heroin and said that it was,
3 in fact -- had greater interference with the
4 ability to quit than did cocaine and
5 heroin -- nicotine had a greater ability to
6 interfere.
7 Well, Dr. Rowell is going to address
8 those topics. Dr. Rowell is going to testify
9 how nicotine works in the nerve synapses.
10 He's going to show how cocaine and the other
11 drugs work in the nerve synapses.

12 THE COURT:
13 You're repeating yourself.
14 I will take the offer and objections
15 under advisement. I will rule first thing in
16 the morning.

17 Recess.

18 MR. RUSS HERMAN:
19 May it please the court, Your Honor may
20 not have to deal with this issue now, and I
21 don't want to burden the Court with issues
22 you don't have to deal with, but I was
23 advised this morning that the Philip Morris
24 expert and fact witness, Mr. Whidby, who is
25 listed as a will-call witness, that Philip
26 Morris, who Mr. Richardson declines to
27 produce two trial transcripts. If they're
28 not going to call Mr. Whidby next week, then,
29 I don't have -- the Court doesn't have to
30 deal with the issue right now. I had
31 understood that the witness was being called
32 next week was Townsend, not.

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1 MR. WITTMANN:
2 Bee. Then, I heard after lunch that
3 Whidby might be called next week. So, I need
4 it clarified so we can get these issues
5 resolved so we can get the transcripts.

6 MR. GAY:
7 Whidby won't be called next week.
8 There's some confidentiality with regard to
9 these transcripts.

10 THE COURT:
11 I've referred that matter to the Special
12 Master. I understand it's come up before --
13 similar situations have come up before, and
14 there's a way to resolve them so that if the
15 transcript of some testimony subject to a
16 Protective Order issued by some other court

17 is an obstacle to producing that transcript,
18 you and Mr. Herman, Mr. Gay, I presume, you
19 will handle it. Discuss that with Mr.
20 Gianna. If there's things that I need to
21 resolve, I will resolve.

22 MR. GAY:

23 One other thing.

24 MR. BRUNO:

25 One quick thing, Your Honor. I made a
26 mistake on the transcript page. Can I
27 correct that now? I gave you the wrong
28 number for the transcript page for the
29 opening statement by Mr. Long.

30 THE COURT:

31 1,366.

32 MR. BRUNO:

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1 Right. It is 11,366. I apologize.

2 THE COURT:

3 Mr. Gay, you have something else?

4 MR. GAY:

5 Yes. I had a question about the depo
6 designation hearings that we need
7 particularly on some Philip Morris
8 depositions, Your Honor, for, perhaps this
9 Thursday morning.

10 THE COURT:

11 Start again.

12 You have some questions about depo
13 designation hearings?

14 MR. GAY:

15 Yes. I would like to try to get some
16 times from the Court with respect to that.

17 THE COURT:

18 Well, what are you referring to, Mr.
19 Gay? I have a letter from Mr. Copley dated
20 April 23 that lists ten of them, three or
21 four witnesses were scheduled for
22 yesterday and I was told those issues were
23 resolved. They include a person named
24 Debethizy who is identified as a Philip
25 Morris witness. There are seven others.
26 You're shaking your head. I don't know what
27 you mean when you're shaking your head. I'm
28 looking at a letter that has ten listed on
29 it. And five of them are identified as
30 Philip Morris witnesses. Are you talking
31 about a different list that I -- other than
32 the one I'm talking about?

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1 MR. GAY:

2 I don't have the list in front of me.
3 The name you mentioned as a Philip Morris
4 witness didn't sound like a Philip Morris
5 witness to me, but maybe I just didn't hear
6 it correctly.

7 THE COURT:

8 Well, let's start again.

9 MR. GAY:

10 All right.
11 THE COURT:
12 You want to talk about setting times for
13 depo cut rules?
14 MR. GAY:
15 That's correct, Your Honor.
16 THE COURT:
17 Of depositions of whom? Do you know the
18 names?
19 MR. GAY:
20 Yes, Your Honor, I do. Myron Johnson.
21 THE COURT:
22 He's on this list, Number 1, M. Johnson.
23 MR. GAY:
24 Kinser. Robin Kinser. Robin Kinser.
25 THE COURT:
26 That person is also on this list.
27 MR. GAY:
28 Okay. Those are the two I most want to
29 get done sometime so we can have some --
30 THE COURT:
31 Well, you know that we worked for
32 exactly five minutes yesterday and I was told
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1 we have nothing else to do. We were there in
2 the Gianna law firm offices, court reporter,
3 lawyers, binders and we were going to do the
4 depositions for G. Burger, D. Debethizy and
5 A. Spears, and I was told, Judge, all of that
6 has been resolved. Let's go home. And we
7 did.

8 MR. GAY:
9 Yeah, I heard that.
10 THE COURT:
11 And we wasted a day.
12 MR. GAY:
13 Very frustrating for us, too, Judge.
14 THE COURT:
15 I just wonder why no one brought that to
16 my attention then and you're doing it now.

17 MR. GAY:
18 I think the reason for that, Judge, was
19 there was no availability for the people who
20 were carrying the Philip Morris witnesses
21 that day and that there had not been a chance
22 to work out -- as of the last time that
23 hearing was scheduled, the matters with
24 respect to the deposition schedule for that
25 day had not been resolved. At some point,
26 they resolved them before the hearing.

27 THE COURT:
28 My only point is, Mr. Gay, I know what I
29 have to do. When I set aside time to do it,
30 I really hate to waste that time by getting
31 there at the appointed place and time and
32 say, Judge, there's nothing to do, and then
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1 the very next day be told that there's some
2 urgency about some other stuff that, I

3 suppose, could have been done yesterday and
4 we wouldn't be having this conversation
5 today. That's my point.
6 MR. GAY:
7 I don't disagree with you.
8 THE COURT:
9 I don't know how to make it any clearer.
10 I don't feel disposed to try to go into that
11 issue at this point.
12 I do remind you we have no testimony
13 scheduled for the morning hours of May 1st.
14 Maybe that will spark some ideas among the
15 lawyers involved in this case.
16 MR. GAY:
17 That's what we're asking for, Judge.
18 THE SPECIAL MASTER:
19 He just said that's what we're asking
20 for.
21 THE COURT:
22 I didn't hear that. I never heard that.
23 Anything else before we adjourn?
24 MR. BRUNO:
25 I don't know if you received my motion
26 to put those documents in evidence.
27 THE COURT:
28 I neglected to solicit objections. I
29 will do that now.
30 MR. SCHNEIDER:
31 You're putting those documents into
32 evidence on the objection to your tender, not
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1 09 trial --
2 MR. BRUNO:
3 That's correct.
4 MR. SCHNEIDER:
5 As evidence for Your Honor to consider
6 and ruling on the tender, I don't have an
7 objection to it, but not as trial exhibits.
8 THE COURT:
9 We'll recess until 9:30 tomorrow
10 morning.
11 (Whereupon, the proceedings are
12 adjourned at 4:03 p.m.)
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1 REPORTER'S CERTIFICATE

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